



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

Distr.: General  
16 September 2016

Original: English

**Committee against Torture**

**Decision adopted by the Committee under article 22 of the  
Convention, concerning communication No. 595/2014\*, \*\***

<i>Communication submitted by:</i>	D.M. (represented by counsel, John Phillip Sweeney)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Australia
<i>Date of complaint:</i>	8 April 2014 (initial submission)
<i>Date of present decision:</i>	8 August 2016
<i>Subject matter:</i>	Deportation to Sri Lanka; risk of torture
<i>Substantive issues:</i>	Non-refoulement
<i>Procedural issues:</i>	Admissibility — manifestly unfounded
<i>Articles of the Convention:</i>	3 and 22

1.1 The complainant is D.M., a national of Sri Lanka born in 1991. He was not granted refugee status in Australia. He claims that if he is deported to Sri Lanka he will face a risk of torture, in violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. At the time of the submission of his complaint, his deportation to Sri Lanka was imminent. The complainant is represented by counsel, John Phillip Sweeney.

1.2 On 8 April 2014, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to deport the complainant to Sri Lanka while the complaint was being considered by the Committee. On 2 May 2016, following a request by the State party dated 31 March 2016, the Committee, acting through the same Rapporteur, denied the request of the State party to lift interim measures.

\* Adopted by the Committee at its fifty-eighth session (25 July-12 August 2016).

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



### **Facts as presented by the complainant**

2.1 The complainant arrived in Australia on 11 April 2012 from Sri Lanka, by boat, and was detained upon arrival. In July 2012, he submitted an application for a protection visa to the Department of Immigration and Citizenship of the State party on the basis of a risk of torture and ill-treatment, for the following reasons: (a) he had in the past experienced harm in Sri Lanka due to his Tamil ethnicity; (b) he bore scarring on his legs, which he alleged would lead the Sri Lankan authorities to believe that he had been involved in the past with the Liberation Tigers of Tamil Eelam; and (c) he had departed from Sri Lanka illegally. On 10 October 2012, the Australian immigration authorities rejected the application on the grounds that the complainant “does not face a chance of real persecution in Sri Lanka” since “he lived there most of his life without incident”, and if returned “it is open to him to return to his village or to relocate anywhere else and to live there without a real chance of serious harm”.

2.2 On 17 October 2012, the complainant submitted an appeal to the Refugee Review Tribunal. On 13 February 2013, the Tribunal upheld the decision of the immigration authorities and dismissed the appeal, on the grounds that the complainant did not satisfy the criteria to be considered a person to whom the State party had protection obligations. On 20 March 2013, the complainant applied for a judicial review of the Tribunal’s decision to the Federal Circuit Court. The latter dismissed that appeal on 17 January 2014. On 21 February 2014, the complainant submitted an application for ministerial intervention under section 46A (2) of the Migration Act 1958 to the Minister for Immigration and Border Protection. On 8 April 2014, the complainant received a letter informing him that his application for ministerial intervention had been rejected as “not being in the public interest”.

2.3 The complainant submits that he has exhausted all available and effective domestic remedies. He maintains that he should not be required to pursue further remedies in higher Australian courts, since such litigation may take a prolonged period of time to be finalized and the complainant is at risk of removal from the country if his bridging visa is cancelled by the Department of Immigration and Border Protection in the meantime.

### **The complaint**

3.1 The complainant claimed that there were substantial grounds for believing that he would be tortured if returned to Sri Lanka. He maintained that, as a young Tamil male from the north of Sri Lanka, with significant scarring on his leg from shrapnel, he would be suspected of having been a combatant in the closing period of the war between the Sri Lanka Army and the Liberation Tigers of Tamil Eelam and was therefore likely to be detained for a long period without charge and interrogated with the use of torture. He also maintained that, having failed in his claim for refugee status in Australia, he would be held in remand at Negombo Prison for contravention of the Immigrants and Emigrants Act, and may be charged and face a long period of imprisonment for illegal departure.

3.2 The complainant also claimed that the Government believed that groups abroad that were linked to the Liberation Tigers of Tamil Eelam and that had managed to flee Sri Lanka during the Humanitarian Operation were consistently trying to contact various people within Sri Lanka and encourage them to regroup militarily. The complainant referred to a statement made on 11 January 2012 by the Minister of Defence of Sri Lanka to that effect and claimed that should he be returned to Sri Lanka, he would be arbitrarily detained and interrogated on that very point and would be at risk of torture and other ill-treatment. The complainant also maintained that relocation internally within Sri Lanka was not an option for a person at real risk from the Sri Lankan authorities, since the Government now controlled the whole of Sri Lanka and illegally departed persons and/or failed asylum

seekers were immediately detected and taken into custody by the Sri Lankan authorities upon their arrival at Colombo Airport.

3.3 The complainant therefore maintains that his return to Sri Lanka, if implemented, would constitute a breach of article 3 of the Convention.

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

4.1 On 7 November 2014, the State party submitted that the complainant's allegations were inadmissible as they were manifestly unfounded pursuant to rule 113 (b) of the Committee's rules of procedure. Should the Committee find the allegations admissible, the State party maintains that they are without merit as they have not been supported by sufficient evidence that there were substantial grounds for believing that the complainant was in danger of being tortured as defined in article 1 of the Convention.

4.2 The State party made reference to the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22, which outlined non-refoulement standards, and to the Committee's decision in *G.R.B. v. Sweden*.<sup>1</sup> The State party maintained that the complainant had failed to establish a prima facie case that there was a foreseeable, real and personal risk that he would be subjected to torture if returned to Sri Lanka. The complainant's claims had been thoroughly considered by the State party's "robust and comprehensive domestic administrative and judicial process", including by the Federal Circuit Court, and the State party took its obligations under the Convention seriously and implemented them in good faith through its domestic migration processes. The State party requests that the Committee accept that it has thoroughly assessed the complainant's claims through its domestic processes and has found that it does not owe the author protection obligations under the Convention.

4.3 The complainant initially lodged an application for a protection visa on 7 July 2012. The decision maker conducted an interview with him with the assistance of an interpreter and considered relevant material such as country information provided by the Australian Department of Foreign Affairs and Trade. The complainant claimed that in April 2011, the Sri Lanka Army separated him from other villagers because of a physical scar on his body, detained him overnight in a Sri Lanka Army camp and interrogated him. He was slapped, his side was twisted and his father was beaten. He also claimed that in October 2011 four armed men arrived at his house, two of whom came into the house and accused him of being a member of the Liberation Tigers of Tamil Eelam. After that incident, he moved to Gampaha. In March 2012, the complainant alleged, he was kidnapped by four men, kept in a room for a week, and then told that he must "join them" and that they would keep him locked up until he agreed. The complainant escaped and several days later departed for Australia.

4.4 The complainant claimed that he feared that if he were returned to Sri Lanka, he would be abducted and killed by the Sri Lanka Army or be forced to join a paramilitary group. He would be targeted because he was a young Tamil man and he would remain under suspicion of involvement with the Liberation Tigers of Tamil Eelam because of the scars on his body that resulted from shrapnel wounds he had suffered during the civil war.

4.5 The primary decision maker determined that the complainant's claims lacked credibility, in particular doubting that the events that it was claimed had occurred in October 2011 and March 2012 had taken place. The primary decision maker concluded that the complainant did not have a significant profile that would draw particular adverse attention from the Sri Lanka Army, from government authorities or from any paramilitary

---

<sup>1</sup> Communication No. 83/1997, Views adopted on 15 May 1998, para. 6.3.

or other group, and that any vulnerability arising from the complainant's Tamil ethnicity and its impact on his returning as a failed asylum seeker, or the scarring on his legs, in the light of all of the circumstances, did not engage the State party's non-refoulement obligations.

4.6 The above-mentioned decision was confirmed by the Refugee Review Tribunal on 12 February 2013, upon appeal. The Refugee Review Tribunal is a specialist external review body that fully and independently reviews decisions concerning protection visas. The author was present at the hearing and was represented by a registered migration agent. He was able to make oral submissions, with the assistance of an interpreter. The Tribunal did not accept that his account of the October 2011 events was credible, finding it implausible that an unknown group of men would threaten the complainant because of his scar and would beat his father, and yet would not take any steps to detain or otherwise pursue him. Neither did the Tribunal accept that the March 2012 events had occurred, because it did not accept that scarring would be a reason for a paramilitary group working outside the law to target the complainant for recruitment. The Tribunal concluded that the complainant did not have a well-founded fear of being apprehended by the Sri Lanka Army in the future due to his scar and/or an imputed association with the Liberation Tigers of Tamil Eelam, or of being abducted or recruited by any paramilitary group. The Tribunal did not consider that the complainant would face persecution solely on the basis of his Tamil ethnicity, either. It found that upon return to Sri Lanka, the complainant might experience a delay in having his entry processed and may be detained and fined before being released, but decided that the above did not engage the State party's non-refoulement obligations.

4.7 On 20 March 2013, the complainant applied for a judicial review of the decision of the Refugee Review Tribunal, claiming that the Tribunal had failed to consider his claims that if returned he would be remanded for a lengthy period and subjected to penalties under the Immigrants and Emigrants Act, which included up to 18 months of imprisonment. On 17 January 2014, the Federal Circuit Court considered that the Refugee Review Tribunal had determined that the author would not be subject to arbitrary or lengthy detention upon returning to Sri Lanka. The Federal Circuit Court concluded that the complainant's claims had been dealt with sufficiently by the Refugee Review Tribunal and dismissed the application for a judicial review.

4.8 On 21 February 2014, the complainant made a request for ministerial intervention under sections 417 and 48B of the Migration Act 1958. His claims were assessed and found not to meet the criteria for ministerial intervention. The decision maker did not consider that there was any new information or evidence to contradict the Refugee Review Tribunal's findings.

4.9 The State party further submitted that the complainant had claimed that he may be held by the Sri Lankan authorities for a longer period of time because his passport had been used as evidence in a people-smuggling case and as a result he was at risk of torture and cruel or inhuman treatment or punishment by the Sri Lankan authorities. The Department of Immigration and Citizenship assessed those claims and concluded that they were not credible, since there was no information suggesting that he was suspected of having taken part in people-smuggling activities. The complainant had also claimed that he would be unable to relocate within Sri Lanka, since the State authorities controlled the entire country now and persons who had departed illegally and/or failed asylum seekers were taken into custody upon their arrival in Sri Lanka. That claim had been considered at the protection visa stage, and the decision maker had concluded that the author did not have a profile with the Sri Lankan authorities and could live elsewhere in Sri Lanka.

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

5.1 On 13 August 2015, the complainant disputed the State party's submission that his allegations were inadmissible and without merit and maintained that his peculiar circumstances rendered him susceptible to torture, forced recruitment by paramilitary organizations and prolonged periods of detention. He referred to the findings of the European Court of Human Rights in *NA. v. the United Kingdom*<sup>2</sup> and maintained that in his case too there was a clear danger of being strip-searched in the airport upon arrival in Sri Lanka and an adverse inference to be drawn in the event that scars were to be found. He also referred to the cases of two returnees from Australia to Sri Lanka who had been interrogated and tortured upon their return.<sup>3</sup>

5.2 The complainant submitted that in his request for ministerial intervention he had drawn attention to the contradictory positions taken — to his detriment — by the Refugee Review Tribunal, but the Minister had failed to consider the importance of the material placed before him. He had cited a Refugee Review Tribunal decision<sup>4</sup> that considered scarring resembling battle wounds among Tamils in Sri Lanka to trigger a peculiar profile susceptible to harm both from the authorities and from paramilitary organizations, and pointed out that in his case the Tribunal had considered the same kind of evidence but had decided that scarring did not give rise to suspicion of membership in the Liberation Tigers of Tamil Eelam or of combat experience. The Minister had not addressed the material injustice committed against the complainant.

5.3 The complainant noted that the findings of the Refugee Review Tribunal pertaining to complementary protection were restricted to one paragraph in which it was stated that the Tribunal was not satisfied that he was a person of interest to the Sri Lankan authorities and he therefore did not meet the complementary protection criterion. He submitted that the presence of scars from an artillery attack had been admitted by the Tribunal, but the Tribunal had ignored “the inferences that are drawn by the authorities” and had failed to consider whether there was a “real chance” that he would be subject to serious harm. The complainant also argued that the non-refoulement protection in the State party had not been adequate in his case. The complainant provided an overview of recent amendments in the domestic legislation which, he argued, diminished protection for asylum seekers and went against the non-refoulement principle.

5.4 The complainant also referred to the concluding observations of the Committee<sup>5</sup> with regard to Sri Lanka and noted that many of its recommendations concerning preventing and investigating instances of torture remained unimplemented and that a culture of impunity continued to exist in Sri Lanka.

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

6.1 On 23 December 2015, the State party noted that in his submission the complainant had claimed that scarring resembling battle wounds among Tamils in Sri Lanka triggered a profile susceptible to harm both from the authorities and from paramilitary groups. The State party submitted in that regard that the Refugee Review Tribunal had not accepted that the complainant had been targeted in October 2011, nor that he had been abducted by a paramilitary group in March 2012 due to his scar or for any other reason. The Federal Circuit Court concluded that the Tribunal's findings that the alleged events had not

<sup>2</sup> Application No. 25904/07, para. 147.

<sup>3</sup> The complainant submitted a two-page report by the Edmund Rice Centre, dated 5 May 2015, describing the above-mentioned cases, which is available on file.

<sup>4</sup> See decision 1213580 [2012] RRTA 1161 (12 December 2012), paras. 98-100.

<sup>5</sup> See CAT/C/LKA/CO/3-4.

occurred “were reasonably open to it based on the evidence before it”. It also considered that the Tribunal had sufficiently dealt with the claim made in regard to the scarring on the complainant’s leg. Following the complainant’s submission to the Committee on 13 August 2015, the Department of Immigration and Border Protection assessed the evidence presented by the complainant (photographs and a signed statutory declaration) and determined that they provided no further evidence regarding the complainant’s claims that he had a profile within Sri Lanka that would attract the attention of the authorities or that his scars “would give rise to a profile, imputed or otherwise, on arrival in Sri Lanka”. The Department of Immigration and Border Protection assessed that there were no substantial grounds for believing that the complainant’s scars would put him at risk of torture.

6.2 In regard to the complainant’s reference to the decision of the European Court of Human Rights in *NA. v. the United Kingdom*, the State party argued that that decision concerned the situation in 2008, before the end of the civil war in Sri Lanka, and that the levels of violence in 2008 could not be equated to the levels of violence in 2015. While there may have been a risk in 2008, the decision of the European Court of Human Rights did not constitute evidence supporting the complainant’s claim that the risk still existed after the war had ended and with the Liberation Tigers of Tamil Eelam no longer active in Sri Lanka. Recent events, such as a change in government leading to political reforms and to a reduced military presence in the north and east of the country, have provided increased security since the complainant’s claims were last considered. On the basis of current country information, the State party’s domestic processes have assessed that the complainant has not provided evidence that he would be identified as a sympathizer of the Liberation Tigers of Tamil Eelam (including on account of his scarring) and has not provided evidence that even if he were identified as having family links with a member of the Liberation Tigers of Tamil Eelam, or a suspected member, that he would have a sufficiently high profile to be in danger of being subjected to torture.

6.3 The State party also submitted that the up-to-date country information concurred with the conclusions reached by the Refugee Review Tribunal. In relation to the complainant’s illegal departure from Sri Lanka, under section 45 (1) (b) of the Immigrants and Emigrants Act it is an offence to depart other than via an official port of entry or exit and the penalties include custodial sentences of up to five years and a fine of up to 200,000 rupees. However on the basis of the current country information, the Department of Immigration and Border Protection had assessed that the most likely penalty was a fine and that custodial sentences were not given to passengers in people-smuggling ventures. The risk of torture was greater for those who were suspected of having committed serious crimes, including people smuggling and terrorism offences, or for high-profile former members of the Liberation Tigers of Tamil Eelam. The State party argued that the complainant did not have those characteristics.

#### **Complainant’s further comments**

7. On 5 August 2016, the complainant reiterated that he disagreed with the State party’s statement that his claims for protection had been subjected to “robust and comprehensive domestic administrative and judicial processes”, since there were inconsistencies in the Refugee Review Tribunal decision, and the Tribunal had paid scant attention to the State party’s non-refoulement obligations under the Convention as it had addressed his claims in one paragraph only. He reiterates that being seen with a scar on arrival at the airport would in and of itself provoke sufficient suspicion to place him at risk of an extended period of detention on remand at Negombo Prison. It would also place him at a significant risk of ongoing harassment on his return to his home village, because the Sri Lankan authorities would be concerned that the scar had been acquired in battle and would perceive him as a combatant or would suspect that the scar had been acquired as part of the alleged shelling of civilian populations at the end of the war. He maintains that civilians

who were victims of or witnesses to war crimes, such as the shelling that injured him, are at risk in Sri Lanka, as the Government continues to resist credible investigations into war crimes allegations.<sup>6</sup> The complainant also noted that the Refugee Review Tribunal decisions were largely based on credibility, and maintained that according to the law, questions of credibility could not be reviewed by the courts, since they only had jurisdiction to consider legal errors. He further noted that the State party had referred to the lower level of violence in Sri Lanka compared to the period before 2009 and had nominated some profiles of those that it considered to be at risk, but it had advanced no further arguments as to why the complainant's arguments put forward to the Committee about why he would be at risk were not to be considered. He argues that the Committee should consider his particular circumstances, should not take the Refugee Review Tribunal's negative credibility findings at face value and should not accept the opinion of the Department of Immigration and Border Protection unquestioningly.

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

#### *Consideration of admissibility*

8.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

8.2 The Committee notes the State party's submission that the present communication is manifestly unfounded and thus inadmissible pursuant to rule 113 (b) of the Committee's rules of procedure. The Committee considers, however, that the communication has been substantiated for the purposes of admissibility, as the complainant has detailed sufficiently the facts and the basis of the claim for a decision by the Committee.

8.3 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not contested that the complainant has exhausted all available domestic remedies. Accordingly, the Committee concludes that it is not precluded by article 22 (5) (b) of the Convention from examining the present case. As the Committee finds no further obstacles to admissibility, it declares the communication admissible and proceeds with its consideration of the merits.

#### *Consideration of the merits*

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

9.2 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 a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

9.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon

---

<sup>6</sup> The complainant refers to the media articles available from <http://tribune.com.pk/story/961509/sri-lanka-rejects-international-war-crimes-probe/> and from [www.loc.gov/law/foreign-news/article/sri-lanka-update-on-war-crimes-investigation-proposal](http://www.loc.gov/law/foreign-news/article/sri-lanka-update-on-war-crimes-investigation-proposal).

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. The Committee remains seriously concerned about the continued and consistent allegations of widespread use of torture and of other cruel, inhuman or degrading treatment perpetrated by State actors, both the military and the police, which have continued in many parts of the country since the conflict ended in May 2009.<sup>7</sup> However, the Committee recalls that the aim of such determinations 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 return; additional grounds must be adduced to show that the individual concerned would be at risk personally.<sup>8</sup>

9.4 The Committee recalls its general comment No. 1, in which it is stated that “the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable”, but it must be “personal and present”. In that regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal. The Committee recalls that under the terms of 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. In that context, the Committee refers to its concluding observations following its 2011 examination of the combined third and fourth periodic reports of Sri Lanka,<sup>9</sup> in which it expressed serious concern about reports suggesting that torture and ill-treatment perpetrated by State actors in Sri Lanka — both the military and the police — had continued in many parts of the country after the conflict with the Liberation Tigers of Tamil Eelam had ended in May 2009.<sup>10</sup> The Committee also refers to its concluding observations following its 2013 examination of the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, in which it noted evidence that some Sri Lankan Tamils had been victims of torture and ill-treatment following their forced or voluntary removal from the State party to Sri Lanka.<sup>11</sup> The Committee further refers to the preliminary observations and recommendations of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment following his joint official visit to Sri Lanka with the Special Rapporteur on the independence of judges and lawyers, from 29 April to 7 May 2016, wherein it was noted that “torture is a common practice” and that “the current legal framework and the lack of reform within the structures of the armed forces, police, Attorney-General’s Office and judiciary perpetuate the real risk that the practice of torture will continue”.<sup>12</sup> The Committee also takes note of credible reports published by non-governmental organizations concerning the treatment given by the Sri Lankan authorities to individuals returned to Sri Lanka.<sup>13</sup>

---

<sup>7</sup> See CAT/C/LKA/CO/3-4, para. 6.

<sup>8</sup> See communications No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006; No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010; and No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010.

<sup>9</sup> See CAT/C/LKA/CO/3-4.

<sup>10</sup> *Ibid.*, para. 6.

<sup>11</sup> See CAT/C/GBR/CO/5, para. 20.

<sup>12</sup> See [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>13</sup> Freedom from Torture, “Tainted peace: torture in Sri Lanka since May 2009”, August 2015, available from [www.freedomfromtorture.org/sites/default/files/documents/sl\\_report\\_a4\\_-\\_final-f-b-web.pdf](http://www.freedomfromtorture.org/sites/default/files/documents/sl_report_a4_-_final-f-b-web.pdf); and 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



9.5 The Committee notes the complainant's claims that he would be at a real and personal risk of torture if returned to Sri Lanka (a) because he had been detained and subjected to ill-treatment in 2011 and 2012 by the Sri Lanka Army and by an unidentified paramilitary group; (b) because he bore scarring on his leg which he alleged would lead the Sri Lankan authorities to believe that he had been involved in the past with the Liberation Tigers of Tamil Eelam; and (c) because of his illegal departure from Sri Lanka. The Committee notes, however, that the relevant organs of the State party thoroughly evaluated all the evidence presented by the complainant and found it to lack credibility. In addition, the Committee notes that, according to his own statement, neither the complainant nor any member of his family were ever involved with the Liberation Tigers of Tamil Eelam, and that the complainant has not presented credible evidence that his scarring alone, resulting from a shrapnel injury sustained in his childhood, would result in him being suspected of links with the Liberation Tigers of Tamil Eelam.

9.6 With regard to the complainant's allegation that he would be arrested and jailed because of his illegal departure from Sri Lanka, the Committee notes the uncontested information that under section 45 (1) (b) of the Immigrants and Emigrants Act, it is an offence to depart other than via an official port of entry or exit and the penalties include custodial sentences of up to five years and a fine of up to 200,000 rupees. The Committee recalls that the mere risk of being arrested and interrogated is not sufficient to conclude that there is also a risk of being subjected to torture.<sup>14</sup> The Committee also observes that even if the complainant is sentenced to a custodial sentence, having to serve such a sentence would not in itself constitute a violation of article 3 of the Convention. The Committee recalls its general comment No. 1, according to which the burden of presenting an arguable case lies with the author of a communication (para. 5). In the Committee's opinion, the complainant has not discharged that burden of proof.

10. The Committee against Torture, acting under article 22 (7) of the Convention, concludes that the decision of the State party to return the complainant to Sri Lanka does not constitute a breach of article 3 of the Convention.

---

2009-2014", March 2014, available from [www.univie.ac.at/bimtor/dateien/violence\\_in\\_sri\\_lanka\\_2009\\_2014.pdf](http://www.univie.ac.at/bimtor/dateien/violence_in_sri_lanka_2009_2014.pdf).

<sup>14</sup> See communications No. 57/1996, *P.Q.L. v. Canada*, Views adopted on 17 November 1997, para. 10.5; and No. 438/2010, *M.A.H. and F.H. v. Switzerland*, decision of 7 November 2013, para. 7.5.