



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. 666/2015*, **

<i>Communication submitted by:</i>	L.P. (represented by counsel, John Phillip Sweeney)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Australia
<i>Date of complaint:</i>	19 March 2015 (initial submission)
<i>Date of adoption of decision:</i>	1 December 2016
<i>Subject matter:</i>	Deportation to Sri Lanka; risk of torture
<i>Substantive issue:</i>	Non-refoulement
<i>Procedural issue:</i>	Admissibility — manifestly ill-founded
<i>Articles of the Convention:</i>	3 and 22

1.1 The complainant is L.P., a national of Sri Lanka of Tamil ethnicity, born in 1986. He claims that his deportation to Sri Lanka would constitute a violation by Australia of article 3 of the Convention. The complainant is represented by counsel, John Phillip Sweeney. Australia made the declaration under article 22 of the Convention on 28 January 1993.

1.2 On 23 March 2015, pursuant to rule 114, paragraph 1, of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to expel the author while the complaint was being considered.

Facts as presented by the complainant

2.1 The complainant is a Sri Lankan citizen of Tamil ethnicity, with people of Sinhala ethnicity in his family tree. He is a native of a town in the Eastern Province of Sri Lanka.

2.2 In 2005, his brother was shot¹ by persons who appeared to be part of the Sri Lankan army. After the shooting, the complainant and his brother moved to another town where they lived for approximately two years before returning to his home town.

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

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



2.3 In 2010, the complainant began volunteering with the Tamil National Alliance. He was mainly engaged in helping S.Y.² in his successful election campaign of that year. The complainant was closely connected to S.Y., yet the motives for his political militancy and his commitment were based on family and racial ties rather than on deep political knowledge. The complainant began to be threatened in 2010 owing to his involvement in the Alliance, as were other volunteers. His aunt was also subjected to threats because of the complainant's political activity.

2.4 In Sri Lanka, the complainant became known as a member of the Alliance, assisting it in the political movement opposing the Government. The Alliance had in the past been the target of political violence because of its lack of support for the ruling Sinhala-dominated national Government.

2.5 After the complainant left Sri Lanka for Australia, members of the Tamil Makkal Viduthalai Pulikal were still actively seeking him. He affirms that he has been and still is suspected by the authorities of being a supporter and member of the Tamil National Alliance.

2.6 On 17 May 2012, the complainant, travelling by boat, arrived in Australia from Sri Lanka and was detained upon arrival. On 25 August 2012, he applied for asylum in Australia.³

2.7 On 24 October 2012, the Department of Immigration and Border Protection found that the complainant was not a refugee and was therefore not a person to whom Australia owed protection obligations.

2.8 The complainant appealed the decision of the Department to the Refugee Review Tribunal of Australia.⁴ On 28 May 2013, the Tribunal upheld the original rejection.

2.9 On 20 June 2013, the complainant applied for judicial review of the Tribunal's decision to the Federal Circuit Court of Australia. His appeal was dismissed on 21 October 2013.

2.10 On 2 December 2014, the complainant made an application to the Minister for Immigration and Border Protection to request ministerial intervention under section 417 of the Migration Act 1958. On 29 January 2015, following comprehensive consideration of the case, including under section 48B⁵ of the Migration Act 1958, the Minister rejected the complainant's request for ministerial intervention. The rejection is part of the Minister's non-compellable powers and cannot be appealed.

The complaint

3.1 The complainant claims that there are substantial grounds for believing that he would be tortured if returned to Sri Lanka. He asserts that he is at risk of torture and other ill-treatment at the hands of the Sri Lankan authorities, notably for reasons of his previous work for the Tamil National Alliance and his relationship with the Alliance politician S.Y.

¹ The complainant claims that this was not random violence but extended automatic weapons fire, which was a testament to the conditions of excessive violence and impunity in which the family was living.

² S.Y., Member of Parliament for the Tamil National Alliance, is well known to the complainant as he is married to S.Y.'s cousin.

³ In accordance with section 65 of the Migration Act 1958, the Minister may grant a visa if the Minister is satisfied that the criteria prescribed for that visa by the Migration Act have been satisfied.

⁴ The Refugee Review Tribunal is an independent statutory body that reviews the decisions of the Department of Immigration and Border Protection to refuse to grant a protection visa.

⁵ Section 48B states that, among other criterion, the Minister may grant a protection visa to an unsuccessful applicant if he or she thinks it is in the public interest to do so.

Moreover, he became easily identifiable as an ongoing sympathizer of the Alliance because of his continuing support for S.Y. in Australia.

3.2 The complainant claims in particular that should he be returned to Sri Lanka, he will be arbitrarily detained, interrogated and charged, as he left the country illegally. He adds that if returned to the Eastern District of Sri Lanka, he will be imprisoned without bail in Negombo jail or be harassed or abducted. He claims that the conditions of detention in the Negombo remand unit constitute degrading treatment, regardless of the length of time spent there on remand.

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 10 December 2015, the State party submitted that the complainant's allegations are inadmissible as they are 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 are not supported by sufficient evidence that there are substantial grounds for believing that the complainant is in danger of being tortured as defined by article 1 of the Convention.

4.2 The State party makes reference to the Committee's general comment No. 1 (1997) on the implementation of article 3 outlining the standards for non-refoulement and to its decision in *G.R.B. v. Sweden*.⁶ The State party maintains that the complainant has failed to establish a prima facie case that there is a foreseeable, real and personal risk that he would be subjected to torture if returned to Sri Lanka. The complainant's claims were thoroughly considered by the State party's "robust and comprehensive domestic administrative and judicial process", including by the Federal Circuit Court. The State party asserts that it takes its obligations under the Convention seriously and implements its obligations in good faith through its domestic migration processes. It requests the Committee to accept that it has thoroughly assessed the complainant's claims through its domestic processes and 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 25 August 2012. The decision maker conducted an interview with him with the assistance of an interpreter and considered relevant material such as the Department of Immigration and Border Protection guidelines on assessments; the Handbook on Procedures and Criteria for Determining Refugee Status issued by the Office of the United Nations High Commissioner for Refugees (UNHCR); and country information, including reports of the Home Office of the United Kingdom of Great Britain and Northern Ireland, the United States of America Department of State and the Danish Immigration Service. The complainant claimed that his brother had been shot in 2005. The decision maker took into consideration that his brother had been questioned on only one occasion, in 2009, in relation to the incident, and had not had any further problems. It was therefore determined that there was no subjective reason why the complainant would be harmed in connection with that incident. In relation to the complainant's previous work for the Tamil National Alliance and relationship with an Alliance politician, the decision maker took into account country information that reported incidents of harm committed against Alliance members and supporters in the Northern Province of Sri Lanka, but not in the Eastern Province, where the complainant lived. The decision maker noted that the complainant was not a civil society activist, nor does he have the profile of a sympathizer of the Liberation Tigers of Tamil Eelam (LTTE). It further noted that UNHCR had advised that given recent improvements, there "is no longer a need

⁶ Communication No. 83/1997, Views adopted on 15 May 1998, para. 6.3.

for group-based protection mechanisms or for a presumption of eligibility for Sri Lankans of Tamil ethnicity originating from the north of the country”.⁷

4.4 As part of assessing the risk the complainant faces of being persecuted because of his race and political opinions, the decision maker specifically considered the complainant’s claims that he would suffer significant harm, including torture, as a result of being a Tamil man and a failed asylum seeker returning to Sri Lanka. The decision maker found that the complainant does not have a profile that would be of significance to the Sri Lankan authorities nor does he belong to any particular high-risk group, which would increase his chances of being detained or subjected to significant harm. The decision maker further noted that the complainant has not committed any crimes and has never been charged with any offence, so it was not likely that he would have been identified as someone who warranted increased scrutiny.

4.5 The primary decision maker determined that the complainant’s claims lacked credibility, and concluded that he did not have a significant profile that would draw particular, adverse attention from the Sri Lankan army, government authorities or any paramilitary or other group. In the light of all of the circumstances, any vulnerability arising from the complainant’s Tamil ethnicity and its impact on his returning as a failed asylum seeker did not engage the State party’s non-refoulement obligations.

4.6 The decision of the Minister’s delegate not to grant the complainant a protection visa was confirmed on 29 May 2013 upon appeal to the Refugee Review Tribunal. The Tribunal is a specialized, external review body and provides full and independent review of decisions concerning protection visas. The author was present at the Tribunal hearing and was represented by a registered migration agent. He was able to make oral submissions with the assistance of an interpreter. In connection with the complainant’s claim to fear harm as a result of his brother being shot in 2005, the Tribunal found that his brother was not of interest to the Government or other groups in Sri Lanka because of a link to LTTE; he continued to live and work in Sri Lanka and was facing no difficulties. The Tribunal did not accept that the complainant was involved in the Tamil National Alliance in the manner claimed, i.e., that he had been targeted in Sri Lanka because of an association with the Alliance and that he had worked with, for, or was associated with, the Alliance Member of Parliament S.Y. The Tribunal noted the complainant’s lack of ability to provide details about the Alliance and to explain why he worked for it; the inconsistent evidence as to the length of his involvement with the Alliance; the inability to identify the political party to which S.Y. belonged; the failure to refer to any association or work with S.Y. or the Alliance at his entry interview, which was explained as forgetfulness; the inconsistent evidence as to his familial relationship with the Member of Parliament; and inconsistent evidence as to when and on how many occasions the complainant had been threatened. The Tribunal was unable to place any weight upon the document submitted as corroborating evidence from the Member of Parliament, taking into account the high prevalence of document fraud in Sri Lanka. The Tribunal also did not consider that the complainant would face persecution solely on the basis of his Tamil ethnicity. It accepted that upon return to Sri Lanka the complainant might experience a delay in having his entry processed and might be detained and fined before being released, but decided that those circumstances did not engage the State party’s non-refoulement obligations.

4.7 On 21 October 2014, the Federal Circuit Court dismissed the complainant’s application for judicial review of the decision of the Refugee Review Tribunal, concluding that no error by the Tribunal was apparent, that the Tribunal had examined and determined

⁷ UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka, 5 July 2010.

the facts of the case, and that the complainant was attempting to engage the Court in an impermissible review of the merits.

4.8 On 2 December 2014, the complainant made a request for ministerial intervention under sections 417 and 48B of the Migration Act 1958. His claims were assessed in full 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 Tribunal's findings.

4.9 The State party further submits that the complainant has raised new claims with the Committee, to the effect that since living in Australia, he has become easily identifiable as an ongoing supporter of the Tamil National Alliance candidate, S.Y. In addition, the complainant has submitted documents not previously provided to decision makers. The Department of Immigration and Border Protection has assessed these documents and considers that they do not raise any new or credible claims that would alter the assessment that its non-refoulement obligations under article 3 of the Convention would not be violated if the complainant were returned to Sri Lanka. Specifically, the photograph claimed to be of the complainant and the Member of Parliament, even if genuine, does not provide sufficient evidence to confirm or deny a relationship between them. As to the letter from the politician, the Department considers that it contains no new information or claims. The State party further notes that the existence of a general risk of violence does not constitute sufficient ground for determining that a particular person would be in danger of being subjected to torture upon return to that country, and submits that the complainant has not provided sufficient evidence indicating that he would personally be at risk of torture or treatment that would be considered torture under article 1 of the Convention.

4.10 On 31 March 2016, the State party reiterated its previous observations and provided additional information outlining the comprehensive domestic processes, including merits review by the Refugee Review Tribunal, judicial review by the Federal Circuit Court and a request to the Minister for Immigration and Border Protection to use his discretionary and non-compellable powers to intervene in favour of an unsuccessful visa application if the Minister considers it is in the public interest to do so. The State party submits that it has assessed the complainant's claims, including through processes established under its Interim Measures Request Policy, and found that there is no new and credible information in the complainant's submissions that engages its non-refoulement obligations, including under article 3 of the Convention. The State party requests that the Committee review its request for interim measures with a view to withdrawing it. Should it decide, after due consideration, not to do so, the State party requests the Committee to fast-track the present communication.

Complainant's comments on the State party's observations

5.1 On 21 August 2016, the complainant, through his counsel, challenged the State party's observations that his submissions "generally cover the same material". He disputes the State party's submission that his allegations are inadmissible and without merit, and maintains that his involvement with the Tamil National Alliance, owing to his close family connections to S.Y., made him vulnerable to torture and prolonged periods of detention. He rejects the State party's assertion that his claims for protection were assessed through "robust domestic processes", and submits that neither the assessment made by the Minister's delegate nor the review of this decision by the Refugee Review Tribunal provided an adequate assessment of the State party's non-refoulement obligations, while the delegate's finding that the complainant would not be identifiable as a failed returned asylum seeker is "absurd".

5.2 The complainant notes that the Tribunal's finding that it was not satisfied that he was a person of interest to the Sri Lankan authorities and thus did not meet the

complementary protection criterion was based on an assessment that contained only 6 paragraphs (out of a total of 184) addressing the protection issue. He further submits that the assessment was based on his status as having left the country illegally and on his links to LTTE, while there was no assessment of the risk he faces because of his association with Tamil nationalist politics and the Alliance.

5.3 In addition, in his application to the Federal Circuit Court, the complainant was not represented by counsel. Although the judge attempted to explain to him that the Court could only review legal errors, he did not understand that the Court did not have jurisdiction over findings of fact or the merits of his claims.

5.4 With regard to the evidence provided by the complainant, notably the letter from S.Y. and the photograph of the complainant with S.Y., he notes that no expert opinion was sought to determine the authenticity of the photograph or the letter. He objects to the reason given for doubting these two pieces of evidence — the fact that there is a high incidence of document fraud in Sri Lanka — and to the “amateur inspection of a printed image file”. He submits that while the Tribunal may be a specialized external review body, it is not specialized in identifying faked images and it is not totally external, as its members are appointed by the Government, their appointment process is not transparent and their independence is “not robustly verifiable”.

5.5 He further maintains, concerning his association with the Tamil National Alliance, that his involvement was because of close family connections to S.Y. and based on loyalty to the family’s “great man”, and that his knowledge of the politics involved was “very sparse” as he was only a loyal “foot soldier”. He adds that from his point of view, whether he was helping S.Y. or helping the Alliance may not have been very clear, but his association with S.Y. did continue beyond 2010 and even up to 2013 in Australia, for which he has provided new evidence before the Committee.

5.6 The complainant submits that his brother’s shooting taken in isolation is not key to his claim that he will suffer significant harm, but taken in the context of his long association with the Tamil National Alliance, in particular with S.Y., the possibility that he would be seen to have ongoing links to LTTE, both in Sri Lanka and in Australia, is heightened.

5.7 The complainant further refers to the suspicions that the Tamil National Alliance is a front for LTTE and engages in separatist politics,⁸ and quotes witness statements contained in a report on an investigation into the alleged abduction and torture of 20 persons at the hands of “white van” people in 2015.⁹

State party’s additional observations

6. On 21 September 2016, the State party commented on the complainant’s submission dated 21 August 2016. It notes that that submission, including the country information referenced by the complainant’s counsel, contains no information that could change the assessment that the complainant’s claims do not engage the State party’s non-refoulement obligations under article 3 of the Convention. The State party further reiterates the content of its submission dated 10 December 2015.

⁸ The complainant provided the following link:
<https://tamiltigeractivities.wordpress.com/2016/03/19/tna-its-pathetic-proclamations-to-deceive-the-un-and-srilanka/>.

⁹ The complainant referred to the International Truth and Justice Project Sri Lanka report entitled *Silenced: Survivors of Torture and Sexual Violence in 2015* of January 2016, available from www.tamilnet.com/img/publish/2016/01/STOP_report_3_v5.1-2.pdf.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 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.

7.2 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 sufficiently detailed the facts and the basis of the claim for a decision by the Committee.

7.3 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.

7.4 As the Committee finds no further obstacles to admissibility, it declares the communication submitted under article 3 of the Convention admissible and proceeds with its consideration of the merits.

Consideration of the merits

8.1 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.

8.2 In the present case, the issue before the Committee is whether the forced removal of the complainant to Sri Lanka would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Sri Lanka. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The Committee remains seriously concerned about the continued and consistent allegations of widespread use of torture and other cruel, inhuman or degrading treatment perpetrated by State actors, both military and police, which have continued in many parts of the country since the conflict ended in May 2009.¹⁰ However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk.¹¹ Conversely, the absence of a consistent pattern of

¹⁰ See CAT/C/LKA/CO/3-4, para. 6.

¹¹ See, for example, communications No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November

flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

8.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being highly probable (para. 6), the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a foreseeable, real and personal risk.¹² Although, under the terms of its general comment No. 1, the Committee is free to assess the facts on the basis of the full set of circumstances in every case, considerable weight is given to the findings of fact that are made by organs of the State party concerned (para. 9).

8.5 The Committee notes the complainant's claim that his forcible removal to Sri Lanka would amount to a violation of his rights under article 3 of the Convention, as he would be exposed to a risk of being detained and tortured by the Sri Lankan authorities because his brother was shot in 2005 by persons whom he understood to be part of the Sri Lankan army; because of his association with the Tamil National Alliance for reasons of family connection with its Member of Parliament, S.Y.; because of his status as a failed asylum seeker of Tamil ethnicity; and because he left the country illegally.

8.6 The Committee takes note of the State party's submission that, in the present case, the complainant has not provided credible evidence and has failed to substantiate that there is a foreseeable, real and personal risk that he would be subjected to torture by the authorities if he is returned to Sri Lanka, and that his claims were reviewed by the competent domestic authorities in accordance with domestic legislation and taking into account the current human rights situation in Sri Lanka.

8.7 In this regard, the Committee notes the State party's submission that the complainant's claim that he could be harmed in connection with the shooting of his brother in 2005 by persons belonging to the Sri Lankan army was thoroughly assessed. It also notes that the complainant's brother was questioned on only one occasion, in 2009, in relation to the incident, that he has had no ongoing problems and that he returned to their home town in the Eastern Province.

8.8 The Committee notes the complainant's claim that he was and would be targeted upon return to Sri Lanka because of his involvement and association with the Tamil National Alliance. However, the Committee notes that the State party's authorities did not accept that the complainant had worked with or for, or was associated with, the Member of Parliament S.Y. It also notes the State party's submission concerning the complainant's inability to provide details about the Alliance and to explain why he worked for it; the inconsistent evidence as to the length of his involvement with the Alliance; the inability to identify the political party to which S.Y. belonged; the failure to refer to any association or work with S.Y. or the Alliance at his entry interview, which was explained as forgetfulness; the inconsistent evidence as to his familial relationship with the politician; and as to when and on how many occasions he had been threatened. It further notes that the State party's responsible organs had thoroughly evaluated the material evidence presented by the complainant and found it to lack credibility.

2006; No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010; No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010; and No. 550/2013, *S.K. and others v. Sweden*, decision adopted on 8 May 2015, para. 7.3.

¹² See also communication No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003, para. 7.3.

8.9 Regarding the complainant's claim that he risks being subjected to torture upon return to Sri Lanka owing to his status as a failed asylum seeker of Tamil ethnicity and to his illegal departure from Sri Lanka, the Committee, while not underestimating the concerns that may legitimately be expressed with respect to the current human rights situation in Sri Lanka and its treatment of, inter alia, failed asylum seekers from overseas, recalls that the occurrence of human rights violations in his or her country of origin is not sufficient in itself to conclude that a complainant runs a personal risk of torture.¹³ The Committee observes that the updated UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka, issued on 21 December 2012, no longer refer to a presumption of eligibility for protection of Sri Lankans simply on the grounds that they are Tamils originating from the north of the country, even though they do caution that a merits-based assessment on the basis of individual circumstances is still warranted and that Tamil ethnicity and place of origin can still be factors that increase the vulnerability of persons within other "risk profiles" whose protection claims warrant particularly close attention. The existence of a general risk of violence does not constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon return to that country; additional grounds must exist to show that the individual concerned would be personally at risk.

8.10 In this context, the Committee refers to its consideration in 2016 of the fifth periodic report of Sri Lanka,¹⁴ when it voiced serious concern about reports suggesting that abductions, torture and ill-treatment perpetrated by State security forces in Sri Lanka, including the police, had continued in many parts of the country after the conflict with LTTE ended in May 2009.¹⁵ The Committee was also concerned at the reprisals against victims of and witnesses to acts of torture and at the acts of abduction and torture in unacknowledged detention facilities, and inquired whether a prompt, impartial and effective investigation of any such acts had been undertaken.¹⁶

8.11 In the present case, the complainant is a Tamil originating from the eastern part of the country, who has not established the existence of additional grounds to show that he is at a foreseeable, real and personal risk of torture if returned to Sri Lanka. The issues relating to human rights violations of returned asylum seekers have also been considered by all domestic processes, including the protection visa application process and the Refugee Review Tribunal. In addition, the Committee notes that, in its assessment of the complainant's asylum application, the State party's authorities also considered the possible risk of ill-treatment of failed asylum seekers upon return to Sri Lanka. In the light of these considerations, the Committee is of the view that, in the present case, the State party's authorities gave appropriate consideration to the complainant's present claim.

8.12 The Committee also notes the complainant's claim that while in Australia, he became easily identifiable as an ongoing supporter of the Tamil National Alliance candidate for Batticaloa District, S.Y. The Committee notes, however, the objection by the State party to the effect that the complainant has not substantiated his claims regarding his activities since arriving in Australia. It further notes that according to the State party's authorities, the material evidence presented¹⁷ did not raise the complainant's profile to one of significance to the Sri Lankan authorities or embassies abroad, nor did it provide

¹³ See, for example, communication No. 426/2010, *R.D. v. Switzerland*, decision adopted on 8 November 2013, para. 9.2.

¹⁴ See CAT/C/SR.1472 and 1475.

¹⁵ See CAT/C/LKA/CO/3-4, para. 6.

¹⁶ See CAT/C/SR.1472, paras. 36 and 42; and CAT/C/SR.1475, paras. 10 and 27.

¹⁷ The photograph of the Member of Parliament together with the complainant and other persons, and the country information.

sufficient evidence to confirm or deny a relationship between the complainant and the Alliance Member of Parliament.

8.13 The Committee recalls that, according to its general comment No. 1, the burden of presenting an arguable case lies with the author of a communication (para. 5). The Committee is of the view that, in the present case, the complainant has not discharged this burden of proof.¹⁸ Furthermore, the complainant has not demonstrated that the State party's authorities that considered the case failed to conduct a proper investigation into his allegations.¹⁹

9. In the light of the foregoing, the Committee considers that the evidence and circumstances invoked by the complainant do not show sufficient grounds for believing that he would run a real, foreseeable, personal and present risk of being subjected to torture upon return to Sri Lanka.²⁰ The Committee therefore considers that the material on file does not enable it to conclude that the return of the author would constitute a violation of article 3 of the Convention.

10. 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.

¹⁸ See communication No. 429/2010, *Sivagnanaratnam v. Denmark*, decision adopted on 11 November 2013, paras. 10.5 and 10.6.

¹⁹ See, for example, communication No. 571/2013, *M.S. v. Denmark*, decision adopted on 10 August 2015, para. 7.9.

²⁰ *Ibid.*, para. 8.