



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2643/2015\*, \*\*

<i>Communication submitted by:</i>	M.P. (represented by counsel, Eddie Omar Rosenberg Khawaja)
<i>Alleged victims:</i>	The author and her two minor children
<i>State party:</i>	Denmark
<i>Date of communication:</i>	13 August 2015 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 92 and 97 of the Committee's rules of procedure, transmitted to the State party on 17 August 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	9 November 2017
<i>Subject matter:</i>	Author's deportation from Denmark to Sri Lanka
<i>Procedural issues:</i>	Inadmissibility — manifestly unfounded; level of substantiation of claims
<i>Substantive issues:</i>	Risk of torture or ill-treatment upon forced removal to country of origin
<i>Articles of the Covenant:</i>	7 and 13
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (a) and (b)

1.1 The author of the communication is M.P.,<sup>1</sup> born on 29 July 1976. She submits the communication on her behalf and on behalf of her two minor children, A.M.P. (born on 11 March 2003) and A.N.P. (born on 24 August 2005). They are all citizens of Sri Lanka. The author and her children are subject to forcible removal to Sri Lanka following the rejection of their application for asylum by the Danish Refugee Appeals Board on 20 June 2013 and on 22 June 2015. They have been living in Denmark at the Sandholm asylum centre in Birkerød while awaiting removal.<sup>2</sup> The author claims that their forcible removal to Sri Lanka would amount to a violation by Denmark of her rights and the rights of her children

\* Adopted by the Committee at its 121st session (16 October–10 November 2017).

\*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Ivana Jelić, Bamariam Koita, Marcia V.J. Kran, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Anja Seibert-Fohr, Yuval Shany and Margo Waterval.

<sup>1</sup> The author requests the Committee not to disclose her identity or that of her two minor children.

<sup>2</sup> The date of the author's removal had not been set at the time of the submission of her initial communication.



under article 7 of the Covenant. The author additionally claims that the State party has violated her rights under article 13 of the Covenant, as the Refugee Appeals Board did not provide for an oral hearing prior to the passing of the decisions of 10 January 2014 and 22 June 2015. She requested that interim measures be issued to prevent their deportation to Sri Lanka. The Optional Protocol entered into force for Denmark on 23 March 1976. The author is represented by counsel.<sup>3</sup>

1.2 On 17 August 2015, pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to deport the author and her children to Sri Lanka while their case was under consideration by the Committee. On 21 August 2015, the Refugee Appeals Board suspended, until further notice, the time limit for the departure of the author and her children from Denmark in accordance with the Committee's request. On 17 March 2016, the State party requested the lifting of the interim measures, as the author had failed to render it probable that she and her children would be at risk of suffering irreparable damage if returned to Sri Lanka. The State party reiterated its request on 17 January 2017.

### **The facts as submitted by the author**

2.1 The author originates from Kilinochchi, in the north of Sri Lanka. She is of Tamil ethnicity and Hindu by faith. She has five siblings, including four brothers and one sister. The author's family has strong ties with the Liberation Tigers of Tamil Eelam (LTTE). Both of her parents and three of her younger brothers have been affiliated with LTTE. Her father was killed by the Sri Lankan Army when she was 7 years old due to this connection. One of the author's brothers was killed in combat between the Sri Lankan Army and LTTE.<sup>4</sup> One of the author's other younger brothers, who is in his mid-thirties, was imprisoned by the authorities from 2009 until 2012 as an active member of LTTE. Under pressure, the author's brother gave the names of his siblings to the authorities, including the name of the author.

2.2 The author has also been affiliated with LTTE, working for them since she was a child. Later on, she worked as a secretary to LTTE and recruited new members to the organization. She also prepared food and cared for LTTE members. Moreover, the author helped out at funerals by preparing the bodies and assisted in looking after orphans whose parents had been affiliated with the group.

2.3 In 2009, the third of the author's younger brothers was interrogated and assaulted by the authorities because of the activities of their other brothers with LTTE. Consequently, he is now permanently disabled. The author's elder brother was also affiliated with LTTE. He returned to Sri Lanka from the Republic of Korea in 2012 and has since gone missing. The author's sister lives in the United Kingdom of Great Britain and Northern Ireland, where she and her husband have gained protection.<sup>5</sup>

2.4 The author (illegally) entered Switzerland in 2001. She was allegedly granted protection status in Switzerland in 2001<sup>6</sup> due to her affiliation with LTTE. While in Switzerland, the author met her former husband,<sup>7</sup> who is also the father of her children, who were born in 2003 and 2005. While they were still married, her husband was very violent and abusive; she reported him to the police several times.<sup>8</sup> The author submits that she received several documents from her former lawyer attesting to the episodes of violence,<sup>9</sup> but that the documents were taken from her by the Swiss police. Those documents were not returned to the author, and they are neither with the Danish Police nor with the Danish Immigration Service.

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<sup>3</sup> The Danish Refugee Council was replaced as counsel by Eddie Omar Rosenberg Khawaja, as from 31 March 2016.

<sup>4</sup> The author does not indicate an exact date.

<sup>5</sup> The author does not elaborate on the term "gained protection".

<sup>6</sup> The author does not specify the date.

<sup>7</sup> No information is available as to when the couple divorced.

<sup>8</sup> A copy of a letter dated 7 April 2014 written by the author's former lawyer in Switzerland was submitted by the author to the Committee.

<sup>9</sup> The author does not mention any other documents.

2.5 In Switzerland, the author's husband was convicted for domestic violence towards her and was sentenced to three years' imprisonment. Due to this judgment, he was to be expelled from Switzerland to Sri Lanka following his imprisonment. Before being expelled from Switzerland, he forced the author and their children to accompany him to Denmark. As the author had refused to leave, she was sedated in order to force her to travel to Denmark. The author and her husband entered Denmark on 25 May 2012 without valid travel documents.<sup>10</sup> On 29 May 2012, they applied for asylum.<sup>11</sup>

2.6 In Denmark, the author's husband forced her to make a false statement as to her identity and grounds for asylum in order to avoid being transferred back to Switzerland. Thus, the asylum claims of the author and her family were treated in Denmark. Under severe pressure from her husband, the author gave the false statement as presented in the decision of 20 December 2012 issued by the Danish Immigration Service. The author's former husband stated as a motive for seeking asylum that he had been detained by the military in August 2009. Subsequently, it was alleged that the author had addressed the nearest Sri Lankan Army camp to seek information about her husband's whereabouts. Allegedly, on that occasion, she suffered sexual abuse by members of the Sri Lankan Army. From then and until 2010, it was claimed that the Army regularly visited the female applicant at her home and sexually abused her. The Danish Immigration Service decided to reject the author's asylum application. The decision was upheld by the Danish Refugee Appeals Board on 20 June 2013. The Board considered that the male asylum applicant had very limited associations with LTTE and that there was therefore no basis for granting him and his family residence permits.

2.7 The author was very afraid of her husband, who threatened to kill her and to take their children away if she did not support his false version of the events. He also physically assaulted the author and her children. This was confirmed by notes in the author's medical records made by her psychologist in early 2013.<sup>12</sup> On 26 February 2013, the psychologist noted that the author "looked like someone who had had to put on necessary makeup to cover her face".

2.8 In 2013, the author's former husband was returned to Sri Lanka after he had assaulted another person in Denmark. The author testified against her former husband in that context. After his return to Sri Lanka, the author's former husband contacted the author by phone and threatened to kill her if she ever returned to Sri Lanka.

2.9 After the return of her former husband to Sri Lanka, the author felt that she could safely present her true grounds for seeking asylum in Denmark. On 24 June 2013, the author sent a letter to the Danish Refugee Appeals Board with a request to reopen her case, explaining her real motives for seeking asylum. On 17 September 2013, the Board refused to reopen the author's asylum case. On 10 January 2014, the Board again rejected the author's request to reopen her asylum case, as she had not provided any new information to justify reconsideration of the decision to deny her asylum. On 16 January 2014, the author's application for residence on humanitarian grounds of 26 June 2013 was rejected by the Danish Ministry of Justice.

2.10 Following these negative decisions, the author went back to Switzerland on 19 January 2014. However, she was returned to Denmark in July 2014 pursuant to the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (the Dublin Convention). On 20 November 2014, the Danish Refugee Council again asked the Board to reopen the author's case. As one of the reasons for its request, the counsel stated that the author, prior to entering Denmark on 25 May 2012, had held a residence permit in Switzerland since 2001, and that the author had been sexually abused by her former husband.

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<sup>10</sup> They have no family ties with Denmark.

<sup>11</sup> At the time of their asylum application, both the author and her husband stated that they had been married since 1998 but did not have a marriage certificate, as their "marriage" was not officially registered. This assertion contradicts the author's statement that she met her husband once in Switzerland.

<sup>12</sup> According to the medical notes attached to the complaint, the author's psychologist was concerned about the author's well-being because of the difficulties she faced with her former husband.

2.11 On 22 June 2015, the Board again refused to reopen the author's case, finding the author's new statement on the alleged risks of abuse due to her and her family's affiliation with LTTE to be non-credible. The author had submitted that her new statement was the same as the statement that she had made in Switzerland when she had allegedly been granted asylum there<sup>13</sup> and that, according to the logic used by the Board, the author had made false statements both in Switzerland and Denmark. According to the author, the Board emphasized that no substantial new information had been submitted in the case beyond the information available at the initial hearing. The Board relied on its decision of 20 June 2013 in which it had stated, *inter alia*, that regardless of whether the Board may consider the applicants' statements as facts, the majority of the members of the Board found no basis for granting residence to the applicants under section 7 of the Aliens Act, as the male applicant's affiliation with LTTE was only very limited.<sup>14</sup> The Board also concluded that the circumstance of the Sri Lankan Army soldiers having subjected the female applicant to sexual abuse in 2009 and 2010 could not independently justify granting her residence. According to the Board, the author's claim that, if returned to Sri Lanka, she would be at risk of abuse due to her and her family's affiliation with LTTE and threats from her former husband also did not constitute grounds for a different assessment.<sup>15</sup> The author also submits that the Board further found that the generally difficult situation of women in north-eastern Sri Lanka and the conditions for ethnic Tamils are not of such nature as to independently justify residence.

2.12 The author claims that she has exhausted all available and effective domestic remedies, as the decisions of the Board cannot be appealed before the Danish courts. The author has not submitted her communication to any other procedure of international investigation or settlement.

### **The complaint**

3.1 The author claims that Denmark would violate its obligations under article 7 of the Covenant by forcibly removing her and her minor children to Sri Lanka.

3.2 The author fears that she would be arrested, together with her children, by the authorities immediately upon arrival in Sri Lanka, due to her and her family's affiliation with LTTE, and would suffer treatment contrary to article 7 of the Covenant. In particular, she is afraid that she would be detained, beaten, raped or tortured by the Sri Lankan Army and that she would end up dead or permanently disabled like her brother. Moreover, the author also fears her violent former husband, who has threatened to kill her if she returns to Sri Lanka. The author cannot seek protection from the Sri Lankan authorities as, if she did so, she would face even more exposure and, consequently, ill-treatment due to her affiliation with LTTE.

3.3 In addition, the author has submitted a number of reports and articles concerning sexual violence against Tamils, as well as articles about failed asylum seekers returning to Sri Lanka, who are at risk of being subjected to cruel, inhuman or degrading treatment or punishment. For example, according to the Office of the United Nations High

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<sup>13</sup> However, as indicated by the State party, the author's information on acquiring asylum in Switzerland is not correct, as she only obtained a temporary residence permit.

<sup>14</sup> The author's former husband was perceived as merely helping LTTE as a kitchen assistant and also appeared to be a very low-profile individual. The circumstances of the male applicant having been detained and subjected to harsh treatment by the Sri Lankan Army in 2009 because of his assistance to LTTE and having subsequently escaped from the military camp where he had been detained were not deemed to be of crucial importance at the time of the decision. Hence, the majority of the Board members concluded that the male applicant had failed to render it probable that, due to his escape, he was at risk of being subjected to disproportionate punishment or other inhuman treatment or persecution if returned to Sri Lanka.

<sup>15</sup> The Board did not provide further arguments to support its conclusions.

Commissioner for Refugees (UNHCR), rejected asylum seekers and returnees appear to be at risk of torture if accused of anti-government political activity or of links to LTTE.<sup>16</sup>

3.4 She adds that, in recent Views regarding failed Tamil asylum seekers, the Committee stated that State parties have an obligation to engage with the risk attached to being a failed asylum seeker from Sri Lanka with links to LTTE.<sup>17</sup> The author also observes that, in several cases, the Danish Refugee Appeals Board has granted residence to Tamils who were affiliated or assumed to be affiliated with LTTE, whether themselves or through family members. The author further submits that the Board has not considered at any point of the asylum procedure her risk of ill-treatment in the event of her return to Sri Lanka as a failed asylum seeker.

3.5 Furthermore, the author contends that several countries have halted all deportations to Sri Lanka because of the numerous reports of arrest and torture of Sri Lankans who have returned to their country after having lived abroad. The author further points out that, in two cases, rejected asylum seekers have claimed that they were detained and tortured following their return from Switzerland to Sri Lanka. After non-governmental organizations made these cases public, the Swiss Federal Office for Migration announced that it would examine these cases and would temporarily stop all expulsions to Sri Lanka until the results of the investigations into the alleged cases of torture were available. Furthermore, the Federal Office for Migration would closely re-examine all cases of Sri Lankans whose asylum applications had been rejected and who must leave Switzerland.

3.6 The author considers that she faces a real and personal risk of irreparable harm because of her ethnicity and because her connection to LTTE is known by the Sri Lankan authorities.

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

4.1 On 17 March 2016, the State party submitted its observations on admissibility and the merits of the communication, elaborating on the author's asylum proceedings and the Danish Refugee Appeals Board's decisions of 20 June 2013, 17 September 2013, 10 January 2014 and 22 June 2015.

4.2 The State party describes the structure, composition and functioning of the Board, which it considers to be an independent, quasi-judicial body.<sup>18</sup> The State party submits that the author has failed to establish a prima facie case for the purpose of admissibility of her communication under article 7 of the Covenant. In its view, the author has not demonstrated that she would face a real and personal risk of irreparable harm, such as that contemplated in article 7 of the Covenant.<sup>19</sup> Therefore, the communication should be considered inadmissible as manifestly unfounded.

4.3 On the merits, the State party contends that the author has not sufficiently established that the return of her and her children to Sri Lanka would constitute a violation of article 7 of the Covenant.

4.4 In its decisions of 20 June 2013 and 17 September 2013, the Board considered the author's initial grounds for claiming asylum, i.e. her fear of being persecuted in the event of her return to Sri Lanka due to her former husband's affiliation with LTTE. Later on, the author withdrew those grounds for asylum and stated that they had been fabricated for the occasion. In its decision of 10 January 2014, the Board considered the author's subsequent

<sup>16</sup> See UNHCR, *Sri Lanka: Country of Origin Information Relating to the Targeting of Ex-LTTE Members/Combatants*, 3 February 2014, available from: <http://www.refworld.org/pdfid/555c44d04.pdf>.

<sup>17</sup> See communication No. 2272/2013, *P.T. v. Denmark*, Views adopted on 1 April 2015, in which three members of the Committee issued a dissenting opinion, stating, inter alia, in para. 3: "The State party's observations in the case under review never meaningfully engage with the risk attached to being a failed asylum seeker."

<sup>18</sup> See for example communication No. 2379/2014, *Obah Hussein Ahmed v. Denmark*, Views adopted on 7 July 2016, paras. 4.1–4.3.

<sup>19</sup> See for example communication No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2.

grounds for claiming asylum, which were that her life would be in danger in the event of her return to Sri Lanka because her younger brother had allegedly been a member of LTTE, and because she feared reprisals from her former husband. In its decision of 22 June 2015, the Board considered the author's most recent grounds for claiming asylum, which were that she feared being persecuted by the authorities in the event of her return to Sri Lanka because of her and her family's alleged affiliation with LTTE. The author repeated that she feared reprisals from her former husband. The State party considers that no substantial new information or views were presented in the author's communication of 13 August 2015 to the Committee.

4.5 On 10 January 2014, the Board also stated that, regardless of any pressure exerted on the author by her former husband, it appeared from the information available that she had made false statements about her grounds for seeking asylum throughout the asylum proceedings. Hence, the new grounds for asylum asserted by the author could not be considered as facts. Moreover, the alleged affiliation of the author's brother with LTTE prior to the author's departure from Sri Lanka could not independently justify granting her residence. On 22 June 2015, the Board said that the new grounds for asylum asserting that she would risk abuse due to her and her family's affiliation with LTTE could not lead to a different assessment, and that those grounds for asylum could not be considered as facts. The author has continually changed and elaborated on her statements to the Danish authorities about her and her family's affiliation with LTTE, which, in the opinion of the State party, weakens the author's general credibility.

4.6 The State party also observes that, at both interviews conducted by the Swiss authorities in 2001, the author stated that she had travelled to Switzerland with the sole purpose of marrying her intended spouse, who was living in Switzerland. She stated that one of her brothers had been shot by the Sri Lankan Army on 14 April 2000 because a person unknown to the author had incorrectly informed the Army that her brother was a member of LTTE. The author then argued that this was not correct, and that her brother had not been affiliated with LTTE. The author also stated that her brother-in-law had been taken by the Sri Lankan Army about five years before her departure, as he had been suspected of being an LTTE supporter, and that she did not know whether he was still in prison. The author further stated that two of her other brothers had disappeared during the war and that she had not seen them since their disappearance in a major attack in 1991. Finally, the author stated that her mother, her sister and another brother of hers lived in Sri Lanka, and that her father had died.

4.7 As regards her own situation, the author stated that she had not been politically active and that she had had no problems with the authorities. When asked whether she had ever been in prison, she replied in the affirmative, stating that she had been detained once by the Sri Lankan Army in 2001 for an inspection and that she had been released immediately. The author answered that nothing had happened to her personally. She replied in the negative when asked whether she had had other reasons for leaving her country of origin and coming to Switzerland. It appeared from her account that she had never been affiliated with LTTE in any way, that she had never personally experienced any other conflicts or problems with the authorities, and that the authorities had never considered her to be a person of interest. Accordingly, the State party submits that it cannot be assumed that the author and her brothers and parents have been affiliated with LTTE in any way, as subsequently submitted by the author.

4.8 From the author's Swiss asylum case documents, it transpires that the author's former husband was granted temporary residence for reasons other than asylum. The author applied for asylum in Switzerland, but her application was rejected. She was granted temporary residence because her former husband had been granted temporary residence.<sup>20</sup> The author's appeal of the decision rejecting her application for asylum had lapsed due to her entitlement to temporary residence. Consequently, the information submitted by the author to the Danish Immigration Service claiming that she had been granted residence in Switzerland because of her brother's affiliation with LTTE is not correct. The author's

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<sup>20</sup> The author's former husband's temporary residence permit was withdrawn following his expulsion from Switzerland.

temporary residence permit for Switzerland was renewed in 2003 and 2005; however, it was withdrawn on 31 July 2012, as the author and her children had not registered their address in Switzerland since 10 April 2012.

4.9 When she re-entered Switzerland on 19 January 2014, she confirmed that the information provided in her asylum application in 2001 remained correct. She stated, however, that, in the event of her return to Sri Lanka, she feared abuse by her former husband, who had been removed from Denmark to their country of origin. She also stated that their children had grown up in Switzerland. The author did not contend before the Swiss authorities that she and her family were affiliated with LTTE, nor that, for that reason, she and her family had a conflict with the Sri Lankan authorities. Consequently, the information provided by the author to the Swiss authorities is not consistent with the information provided by the author to the Danish authorities. According to the information most recently provided by the author to the Danish authorities, she and her family have allegedly been affiliated with LTTE for years, and their conflicts with the Sri Lankan authorities have also been going on for years — both dating back to before the author was interviewed by the Swiss authorities on 27 January 2014. The author has thus had various occasions to submit this information to the Swiss authorities, if it were true.

4.10 The other contradictions between the statements made to the Swiss asylum authorities and those made to the Danish asylum authorities include that, upon her entry into Denmark in May 2012, the author stated that from 2009 to 2011 her former husband had been imprisoned because of his affiliation with LTTE and that, as a result, she had been sexually abused by the Sri Lankan Army. The author maintained that statement on the grounds for asylum for more than one year. She also maintained that statement after her former spouse had been remanded in custody on 5 March 2013. In her second request to reopen her asylum case, submitted in October 2013, the author withdrew her original statement and instead stated that her life would be in danger in the event of her return to Sri Lanka because her younger brother had been a member of LTTE, and that she also feared reprisals from her former husband. She further stated that she had stayed in Switzerland from 2001 to 2011 and that she wanted to return to Switzerland. In her third request to reopen her asylum case, submitted in November 2014, the author further elaborated on her grounds for asylum, stating that she feared being persecuted by the authorities in the event of her return to Sri Lanka because of her and her family's alleged strong affiliation with LTTE. The author submitted to the Danish Refugee Appeals Board that both of her parents and three of her brothers had been affiliated with LTTE and that her father had been killed by the military because of his affiliation with LTTE. She was also reportedly affiliated with LTTE herself and had been so since her childhood. She also repeated that she feared reprisals from her former spouse. Thus, the author has given several different and changing grounds for asylum to the Danish authorities. As regards her initial grounds for asylum, the author herself has admitted that they were not true. The author's subsequent grounds for asylum concerning her brother's affiliation with LTTE and the assertion that she had been granted asylum in Switzerland on that ground were not true either.

4.11 As stated above, the author informed the Swiss authorities that she had not been politically active, that she had not experienced any problems with the Sri Lankan authorities, and that her brother was indeed not affiliated with LTTE. As regards the alleged pressure from her former husband, the State party observes that he was remanded in custody on 5 March 2013 and remained deprived of his liberty at the time of the Board's hearing on 20 June 2013. Therefore, the author also could have informed the Board about coercion by her former husband. However, she chose to continue to make false statements to the Danish authorities. It is further observed that the author could have returned to Switzerland already at that time.

4.12 Taking into account that 12 years have passed since the author's departure from Sri Lanka, the State party finds no reason to assume that the author is of any interest to the Sri Lankan authorities. Even though they may have perceived the author's brother as a supporter of LTTE and shot him for that reason, this is an isolated incident dating back more than 15 years to 2000. Consequently, it cannot be assumed that the author would be of any interest to the Sri Lankan authorities for that reason alone. As stated to the Swiss authorities, the author was detained by the Sri Lankan Army in 2001 and subsequently

released. Additionally, the Sri Lankan authorities have never carried out any acts directly targeted at the author. In this regard, reference is made to the judgments delivered by the European Court of Human Rights on 20 January 2011 concerning five applications submitted by ethnic Tamils from Sri Lanka against Denmark, in which the Court said that returning the applicants to Sri Lanka would not constitute a violation of the European Convention on Human Rights.<sup>21</sup>

4.13 As regards the author's reference to the Committee's Views in the case *P.T. v. Denmark*, the State party recalls the Committee's jurisprudence that important weight should be given to the assessments conducted by the State party, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.<sup>22</sup> The State party adds that exposure to a past risk does not imply a risk at present, and that the author needs to present evidence that the authorities have been looking for her or have shown some interest in her whereabouts in the recent past.<sup>23</sup>

4.14 The State party further submits that, according to the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka, of 21 December 2012, certain groups of persons with links to LTTE may be subjected to treatment that may give rise to a need for international refugee protection, including persons who have held senior positions or persons with considerable authority in the LTTE civilian administration, former LTTE combatants, and persons with family links or who are otherwise closely related to such persons. Other background reports also appear to contain no information that would lead to the assumption that Tamils such as the author with a low-risk profile would be subjected to persecution or abuse upon their return to Sri Lanka that would justify asylum.<sup>24</sup> In its decision of 22 June 2015, the Danish Refugee Appeals Board made a specific and individual assessment of the author's situation taking into account the background information available and found that the author was not at risk of persecution or abuse in the event of her return to Sri Lanka. The fact that the author returns as a failed asylum seeker cannot in itself lead to a different assessment either, as she has no conflicts with the Sri Lankan authorities.

4.15 As regards the author's fear of her former spouse, the Board considered that incidents of abuse relating to conflicts between former spouses were private sphere conflicts, which normally did not justify the granting of residence. Concerned women would instead have to seek protection from the authorities in their country of origin. However, in its jurisprudence the Board recognized that certain kinds of abuse by private individuals may be of such scope and intensity as to amount to persecution if the authorities are not able or willing to offer protection. In its decision of 10 January 2014, the Board considered that the author had not rendered it probable that she would be unable to obtain protection from the Sri Lankan authorities. It also noted that the author and her former husband had lived separately since his imprisonment on 5 March 2013 and following his return to Sri Lanka at the end of 2013. Furthermore, the author reported her former spouse to the Swiss police for violence and sexual abuse, he was sentenced in Switzerland on that ground, and she testified against him in Danish criminal proceedings. Therefore, the author cannot be considered particularly vulnerable with regard to her former spouse, and she has

<sup>21</sup> See European Court of Human Rights, *N.S. v. Denmark* (application No. 58359/08); *P.K. v. Denmark* (application No. 54705/08); *S.S. and others v. Denmark* (application No. 54703/08); *T.N. and S.N. v. Denmark* (application No. 36517/08); and *T.N. v. Denmark* (application No. 20594/08).

<sup>22</sup> See *P.T. v. Denmark*, paras. 7.3 and 7.4. The State party also refers to further jurisprudence of the Committee in that regard, including communications No. 2393/2014, *K v. Denmark*, Views adopted on 16 July 2015, paras. 7.4 and 7.5; No. 2426/2014, *N v. Denmark*, decision of inadmissibility adopted on 23 July 2015, para. 6.6; No. 2186/2012, *Mr. X and Ms. X v. Denmark*, Views adopted on 22 October 2014, para. 7.5; and No. 2329/2014, *Z v. Denmark*, Views adopted on 15 July 2015, para. 7.4.

<sup>23</sup> See, for example, communication No. 429/2010, *Mallikathevi Sivagnanaratnam v. Denmark*, decision by the Committee against Torture of 2 December 2013, paras. 10.5 and 10.6.

<sup>24</sup> See for example Human Rights Watch, "We Will Teach You a Lesson" — *Sexual Violence against Tamils by Sri Lankan Security Forces*, 26 February 2013; United States of America Department of State, *Country Report on Human Rights Practices 2014 — Sri Lanka*, 25 June 2015; and Danish Refugee Council, *Tilbagevendten til Sri Lanka* (Return to Sri Lanka), December 2014.

family members, including her brothers, in Sri Lanka, and could therefore rely on a male social network in Sri Lanka.

4.16 The State party recalls that the Board thoroughly examined each of the author's claims and found that several points of her claims regarding her and her family's affiliation with LTTE were not credible. In her communication to the Committee, the author merely disagrees with the Board's assessment of the evidence and its factual conclusions, without demonstrating that the assessment was arbitrary or otherwise amounted to a denial of justice. Therefore, the State party submits that the author is in fact trying to use the Committee as an appellate body to have the factual circumstances of her case reassessed.

4.17 In conclusion, the State party reiterates that the author has failed to establish that there are substantial grounds for believing that she and her children would be in danger of being subjected to inhuman or degrading treatment or punishment if returned to Sri Lanka. Accordingly, it submits that their return to Sri Lanka would not constitute a violation of article 7 of the Covenant and requests the Committee to lift the interim measures that it granted.

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

5.1 On 23 June 2016, the author submitted that there was no basis for concluding that she had failed to establish a prima facie case for the purpose of admissibility of her communication under article 7 of the Covenant.

5.2 She claims to have substantiated the specific reasons why she fears that a forcible return to Sri Lanka would result in a risk for her and her children of treatment incompatible with article 7 of the Covenant. The author claims to have substantiated why she believes that the findings of the Danish Refugee Appeals Board, including the assessment of relevant background information on LTTE affiliations and persecution in Sri Lanka, were flawed. She submits that the assessment of her credibility with regard to her direct and indirect affiliation with LTTE was not carried out thoroughly in the context of the Board's decisions of 10 January 2014 and 22 June 2015, since no oral hearing was conducted to verify the credibility of her statements.

5.3 The author contends that the State party's decisions of 10 January 2014 and 22 June 2015, in which it refused to reopen her case without an oral hearing, violated her rights under article 13 of the Covenant on its own, or read in conjunction with article 7 of the Covenant. In this connection, she considers that the State party's authorities did not thoroughly examine her new statements regarding her affiliation with LTTE.

5.4 The author argues that article 13 of the Covenant provides for two-stage expulsion procedures, with one stage relating to the expulsion order itself and the other to the review of the order. Accordingly, the applicant must be allowed to submit his or her arguments against the first decision, including the possibility to present relevant evidence and have the case reviewed. The guarantees provided for under article 13 are generally fulfilled under the Danish law governing the review and appeal of decisions by the Danish Immigration Service to the Board. However, a substantive assessment of the presented evidence is necessary. Where evidence relies on statements made by the applicant, the Board must assess the evidence and statements in an oral hearing. In the present case, the State party rejected the author's subsequent statements related to her own affiliation with LTTE on the ground that they were inconsistent with earlier claims related to her husband's affiliation. Nonetheless, the authorities did not provide the author with a two-stage assessment, initially through the Danish Immigration Service and subsequently before the Board, and they did not give her the opportunity to have an oral hearing, which would have been essential to assess the credibility of her statements and to accept or dismiss them.

5.5 The author argues that the State party's conclusion as to her lack of credibility and the consequent dismissal of her statements regarding her own and her brother's affiliation with LTTE cannot be considered to be based on a proper assessment by the Board, as the assessments were in writing only. In its decision of 10 January 2014, the Board rejected the author's new statements under section 40 of the Danish Aliens Act, as the author was obliged to give all relevant information to the authorities, which she had not done during

the first oral hearing. In its decision of 22 June 2015, the Board nonetheless stated that no new relevant information had been provided by the author.

5.6 The author considers that the State party is attempting to use the Committee as an ordinary appeals body to reach a decision based on its new assessment of the author's credibility. She submits that this should have been done by the Board in an oral hearing in accordance with article 13 of the Covenant, prior to the passing of the decisions of 10 January 2014 and 22 June 2015.

5.7 The author requests the Committee to assess whether there has been a violation of article 7, read in conjunction with article 13, of the Covenant, given the factual circumstances of her case at the time when the Board reached its decisions on 10 January 2014 and 22 June 2015. The author submits that the Board's decisions of 10 January 2014 and 22 June 2015 were manifestly unreasonable and arbitrary in nature, as she was denied a thorough oral hearing on the new statements about her and her brother's affiliation with LTTE.

5.8 The author reiterates that her affiliation with LTTE would give rise to persecution if the author and her children were to be forcibly returned to Sri Lanka. Accordingly, the author requests the Committee not to lift the interim measures.

#### **Additional submission from the State party**

6.1 On 17 January 2017, the State party submitted additional observations. It argues that the author's additional observations of 23 June 2016 do not provide any new and specific information on her original grounds for asylum. It therefore reiterates its observations of 17 March 2015.

6.2 Regarding the author's claim that the Danish Refugee Appeals Board's decisions dated 10 January 2014 and 22 June 2015 violated her rights under article 13 of the Covenant, read alone and in conjunction with article 7 of the Covenant, the State party argues that this part of the claim should also be considered inadmissible as manifestly ill founded. It asserts that the author has failed to establish a prima facie case for the purpose of admissibility of this part of her communication under article 13 of the Covenant. Alternatively, it submits that the author did not substantiate that article 13 was violated.

6.3 Concerning the author's submission relating to her right to an oral hearing, the State party observes that it follows from the Committee's jurisprudence that article 13 of the Covenant does not confer the right to appeal<sup>25</sup> or the right to a court hearing.<sup>26</sup>

6.4 The State party further observes that, in all cases where the asylum seeker claims that essentially new information has come to light, the Board makes a specific and individual assessment of whether this new information may result in a different decision.

6.5 In this regard, the State party elaborates on the Board's rules of procedure, whereby it may uphold its previous decision or decide to reopen a case. In particular, the Chairman of the panel that previously decided the case may decide that the panel is to determine whether to reopen the case at an oral hearing or through deliberations in writing. The panel then has to decide whether the case should be reopened and considered at a new hearing by the same panel that previously decided the case and with all parties to the case present, or whether it should be reopened and considered at a hearing by a new panel. Cases may be reopened for reconsideration at a new hearing before the panel that previously decided the case if the asylum seeker has provided essentially new information of significance to the decision on the case, and if it is determined that the asylum seeker should be given the opportunity to make a statement in person in this respect.

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<sup>25</sup> See e.g. *Mr. X and Ms. X v. Denmark*, para. 6.3.

<sup>26</sup> The State party refers to the Committee's jurisprudence, e.g. communication No. 58/1979, *Maroufidou v. Sweden*, Views adopted on 9 April 1981, para. 10.1, arguing that the Committee did not dispute that a mere administrative "review" of the decision to expel the author from Sweden was not in violation of article 13 of the Covenant.

6.6 According to the general principles of public administration, the Board must, on its own initiative, reopen cases of refused asylum seekers who are about to be returned if essentially new information has come to light that affects the basis on which the Board made its previous decision. It may be necessary to obtain additional information before the Board can decide on the issue of reopening. This is fully in accordance with the Board's usual practice and is consistent with the two-instance principle.

6.7 The State party observes that the author's asylum application was examined by the Danish Immigration Service at first instance and heard by the Board at second instance. Moreover, the Board considered on three separate occasions whether to reopen the author's asylum case following a thorough assessment of the information on the alleged affiliation of the author and her brother with LTTE, which was submitted in connection with the request to reopen the case. The Board found that this new information on the affiliation of the author and her family with LTTE could not be accepted as fact, considering in particular the information provided by the author to the Swiss authorities on two previous occasions.

6.8 Furthermore, the State party submits that the Board carefully assesses the information provided and the submissions made in all communications lodged before the Committee. In such cases, the Chairman of the panel that initially heard the case determines whether the communication provides a basis for reopening the asylum case and, if so, gives the detailed reasons for the reopening. The Board therefore always makes an assessment of the merits of a communication lodged with the Committee. In the case at hand, the State party submits that there is no basis for the author's allegation that the Board is trying to use the Committee as an appellate body.

6.9 The State party therefore considers that the author's rights under article 13 of the Covenant, in itself or read in conjunction with article 7 of the Covenant, were not violated in connection with the consideration of the author's asylum case by the Danish authorities. The State party reiterates that the author attempted to obtain residence in Denmark by deliberately providing incorrect information about current persecution in Sri Lanka, despite having stayed in Switzerland for several years before doing so. This situation was revealed when the author requested the reopening of her asylum case. The author then relied on different grounds for seeking asylum, which, as mentioned above, the Board could not accept as facts. In the State party's view, the author has thus deliberately abused the asylum system, and this abuse has been aggravated by her attempt to prolong her unwarranted stay in Denmark by lodging a communication with the Committee.

6.10 Accordingly, the State party kindly requests the Committee to review its request for interim measures and to examine this case at its upcoming session.

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

#### *Consideration of admissibility*

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

7.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 The Committee notes that the State party has not objected to the admissibility of the communication under article 5 (2) (b) of the Optional Protocol. It also observes that the author filed an application for asylum, which was lastly rejected by the Danish Refugee Appeals Board on 22 June 2015. Since the decisions of the Board cannot be appealed, no further remedies are available to the author. Accordingly, the Committee considers that domestic remedies have been exhausted.

7.4 Concerning the author's claim under article 13, the Committee notes the State party's argument that the author's claims are insufficiently substantiated, as this provision

of the Covenant does not confer the right to appeal<sup>27</sup> or the right to a court hearing.<sup>28</sup> In this regard, the Committee notes the State party's submission that the author's asylum case was heard at two instances, including the Board as an independent and quasi-judicial body, which is considered as a court or tribunal. The Committee observes that the Board considered on three separate occasions whether to reopen the author's asylum case and decided that it was objective and reasonable not to accept the changing grounds for seeking asylum as facts, without resorting to an oral hearing. In view thereof, the Committee considers that the author has failed to sufficiently substantiate for purposes of admissibility that the above-mentioned proceedings amounted to a denial of justice in her case, in violation of article 13 of the Covenant. The Committee therefore concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

7.5 The Committee notes the author's claim under article 7 of the Covenant that, if she were removed to Sri Lanka, she would be at risk of being detained, beaten, raped or tortured by the Sri Lankan Army. It also notes the author's argument that she fears her violent former husband, who has threatened to kill her if she returns to Sri Lanka, asserting that she cannot seek adequate protection from the Sri Lankan authorities in that regard. The Committee also takes note of the State party's argument that the author's claims under article 7 in regard to her perceived LTTE affiliation are unsubstantiated, that her fears of her former husband do not meet the threshold of a risk of persecution, and that the author has not rendered it probable that she would be unable to obtain protection from the Sri Lankan authorities. However, the Committee considers that, for the purpose of admissibility, the author has provided sufficient substantiation regarding those claims.

7.6 The Committee declares the communication admissible, insofar as it appears to raise issues under article 7 of the Covenant, and proceeds with its consideration of the merits.

#### *Consideration of the merits*

8.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

8.2 The Committee notes that the author claims that the State party would violate its obligations under article 7 of the Covenant by forcibly removing her and her minor children to Sri Lanka. In that regard, the Committee notes the author's fears that she would be detained by the authorities due to her and her family's alleged affiliation with LTTE. In particular, she is afraid that she will be detained, beaten, raped and tortured by the Sri Lankan Army and that she will end up dead or permanently disabled like her brother. The Committee further notes the author's fear of her violent former husband, who has threatened to find and kill her if she returns to Sri Lanka. In this regard, the Committee notes the author's claim that, in this context, she cannot be expected to seek protection from the Sri Lankan authorities, as she would face even more exposure and ill-treatment from them. Moreover, the Committee notes the author's claim that failed asylum seekers of Tamil ethnicity returning to Sri Lanka who are actually affiliated with or assumed to be affiliated with LTTE are at risk of being subjected to cruel, inhuman or degrading treatment or punishment, including sexual violence. In that regard, the author claims that the Danish Refugee Appeals Board has not, in any of its decisions, considered the risk of ill-treatment she would face in the event of her return to Sri Lanka as a failed asylum seeker.

8.3 The Committee notes the State party's argument that the author's claims with respect to article 7 of the Covenant should be considered as manifestly unfounded because the author has not sufficiently established that she would face a real and personal risk of irreparable harm, such as that contemplated by article 7 of the Covenant, if returned to Sri Lanka. The State party emphasizes that the Board considered four different sets of the author's grounds for asylum: (a) fear of being persecuted due to her former husband's affiliation with LTTE — a ground that the author later withdrew, admitting that it had been fabricated for the occasion; (b) fear that her life would be in danger in the event of her

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<sup>27</sup> See e.g. *Mr. X and Ms. X v. Denmark*, para. 6.3.

<sup>28</sup> See e.g. *Maroufidou v. Sweden*, para. 10.1.

return to Sri Lanka because her younger brother had allegedly been a member of LTTE — a ground that was also untrue; (c) fear of reprisals from her former husband; and (d) fear of being persecuted by the Sri Lankan authorities because of her and her family's alleged affiliation with LTTE. The Committee notes the State party's submission that no substantial new information was provided in the author's communication, and that the author has continually changed and elaborated on her statements to the Danish authorities about her and her family's affiliation with LTTE, which weakens the author's general credibility. The Committee further notes that the author lived in Switzerland from 2001 to 2011; that she requested asylum in Switzerland and her application was rejected; and that she admitted to the Swiss asylum authorities that she had never been affiliated with LTTE in any way and had never personally experienced any conflicts or problems with the Sri Lankan authorities.

8.4 The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant. The Committee has also indicated that the risk must be personal<sup>29</sup> and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high.<sup>30</sup> The Committee further recalls its jurisprudence that considerable weight should be given to the assessment conducted by the State party and that it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence in order to determine whether such a risk exists,<sup>31</sup> unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.<sup>32</sup>

8.5 The Committee notes in particular the Board's findings of 10 January 2014 and 22 June 2015 that, regardless of any pressure exerted on the author by her former husband, it appeared from the information available that the author had made false statements about her grounds for seeking asylum throughout the asylum proceedings, and that the new grounds for asylum asserted by the author could therefore not be considered as facts. The Board noted, for example, that the author's statement to the Danish Immigration Service in 2013 claiming that she had been granted residence in Switzerland because of her brother's affiliation with LTTE was not true. The Committee also notes the State party's observations that, at both interviews conducted by the Swiss authorities in 2001, the author stated that she had travelled to Switzerland with the sole purpose of marrying her intended spouse, who was living in Switzerland. The Board contrasted the information provided by the author to the Danish authorities claiming that she and her family had been affiliated with LTTE for years, and that their conflicts with the Sri Lankan authorities had been going on for years, with the information she provided to the Swiss authorities on 27 January 2014. It appears, therefore, that the author did not contend before the Swiss authorities that she and her family were affiliated with LTTE, nor that, for that reason, she and her family had a conflict with the Sri Lankan authorities; instead, she only referred to her fear of abuse by her former husband, which she did not mention to the Board at the hearing of 20 June 2013.

8.6 The Committee further notes that, in its decision of 10 January 2014, the Board observed that the author could seek protection against her former husband from the Sri Lankan authorities, and that she had not rendered it probable that the authorities would not be able to provide her with such protection. In its decision of 22 June 2015, the Board considered that the current background material on Sri Lanka provided no specific basis for assuming that Tamils who had not themselves had any affiliation with LTTE and whose family members had not been high-profile members of LTTE would risk persecution or abuse justifying asylum merely as a consequence of their ethnicity. It also considered that

<sup>29</sup> See communications No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2; and No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6.

<sup>30</sup> See *X v. Denmark*, para. 9.2, and communication No. 1833/2008, *X v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

<sup>31</sup> See communications No. 1763/2008, *Pillai et al. v. Canada*, Views adopted on 25 March 2011, para. 11.4; and No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3.

<sup>32</sup> See, inter alia, *ibid.* and communication No. 541/1993, *Simms v. Jamaica*, decision of inadmissibility adopted on 3 April 1995, para. 6.2.

the circumstance of the author returning as a failed asylum seeker, with a low-risk profile, could not lead to a different assessment, as she had no conflicts with the Sri Lankan authorities. In this regard, the Committee notes the State party's assertion that the Board made both an individualized assessment and an overall assessment of the specific circumstances of the author's case, taking into account the background information on the situation in Sri Lanka, and found that the author was not facing any threat that would justify asylum in Denmark.

8.7 The Committee further notes the author's submission that her claims were not properly assessed by State party's authorities and that the Board's decisions of 10 January 2014 and 22 June 2015 were manifestly unreasonable and arbitrary because she was denied a thorough and oral hearing on the new statements on her and her brother's affiliation with LTTE, in violation of article 7 of the Covenant. In this connection, the Committee notes that, according to the information available in the file: the author was detained once by the Sri Lankan Army and immediately released in 2001; she was of low profile, without any clear affiliation with LTTE; she has not provided any evidence that the authorities had been looking for her or had any interest in her whereabouts in the recent past; and she has not demonstrated that the Sri Lankan authorities would be unable or unwilling to provide her protection against domestic violence. The Committee recalls its jurisprudence that certain kinds of abuse by private individuals may be of such scope and intensity as to amount to persecution if the authorities are not able or willing to offer protection.<sup>33</sup> However, the Committee considers that, in the present case, the author's claims mainly reflect her disagreement with the factual conclusions drawn by the State party, including the alleged risk of being harmed by her former husband, and do not demonstrate that these conclusions are arbitrary or manifestly unreasonable or that the proceedings in question amounted to a denial of justice.<sup>34</sup>

8.8 In the light of the above, the Committee concludes that the information before it does not demonstrate that the author would face a real and personal risk of treatment contrary to article 7 of the Covenant in the event of her removal to Sri Lanka.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the removal of the author to Sri Lanka would not violate her rights under article 7 of the Covenant.

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<sup>33</sup> See communication No. 2288/2013, *Omo-Amenaghawon v. Denmark*, Views adopted on 23 July 2015, para. 7.5.

<sup>34</sup> See e.g. *P.T. v. Denmark*, para. 7.4.