



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. 834/2017*, **

<i>Communication submitted by:</i>	S.R. (represented by counsel, Rabinderei Savitri Nandoe)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	The Netherlands
<i>Date of complaint:</i>	31 May 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 18 July 2017 (not issued in document form)
<i>Date of adoption of decision:</i>	22 July 2021
<i>Subject matter:</i>	Deportation to Sri Lanka
<i>Procedural issue:</i>	Level of substantiation of claims
<i>Substantive issue:</i>	Risk of torture upon return to country of origin (non-refoulement)
<i>Article of the Convention:</i>	3

1.1 The complainant is S.R., a national of Sri Lanka born in 1977. He claims that the Netherlands would violate his rights under article 3 of the Convention if it removed him to Sri Lanka. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 21 December 1988. The complainant is represented by counsel.

1.2 On 18 July 2017, the Committee, acting through its Rapporteur on new complaints and interim measures, decided not to issue a request for interim measures under rule 114 of its rules of procedure.

Facts as submitted by the complainant

2.1 The complainant was working as a taxi driver in the Bandaranaike International Airport in Katunayaka, just outside Colombo, using his own van. On 20 November 2010, he was driving three Tamil customers from the Kotahena district to the airport when he was

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

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



stopped at a checkpoint at the airport by the Sri Lankan Army. He was arrested¹ for having ties with three suspected combatants of the Liberation Tigers of Tamil Eelam (LTTE).² The complainant claims to have been beaten and maltreated by Sri Lankan Army officers who questioned him about his links to the three LTTE members he was transporting.

2.2 The complainant and his three customers were blindfolded and pushed into a van, and their hands were tied behind their backs. When the van stopped, the complainant was pulled from the van and placed in a room. The following day, armed officers in civilian clothes entered the room and continued the interrogation. The complainant was accused of transporting militants to help them escape from the country. The officers hit him on the head with their gun. The following day, he was interrogated and again beaten, this time with a cricket bat and a polyvinyl chloride (PVC) tube, until he lost consciousness.

2.3 On 16 December 2010, the complainant was released, following the payment by a friend of a bribe in the amount of 700,000 Sri Lankan rupees.³ The same friend took him to the friend's house and informed the complainant that while he had been in custody, his house had been searched. The friend also told him that his release had been arranged illegally, and that it was therefore not safe for him to return home to his family. After a week, a smuggler arranged for the complainant's departure from the country using a false passport. The complainant flew to Qatar and then to Romania. From there, he was transported to the Netherlands by car.⁴

2.4 On 10 January 2011, the complainant entered the Netherlands, and on 8 March 2011, he applied for asylum. His asylum application was rejected on 16 March 2011 by the Immigration and Naturalization Service. The same day, the complainant lodged an appeal for judicial review with the Zwolle District Court.

2.5 The complainant claims that after he fled Sri Lanka, his house was searched by the authorities in February 2011, after which his wife and mother-in-law⁵ were taken to the police station and interrogated there. He claims that his wife was harassed that day and that, together with their children, she went into hiding.⁶

2.6 The complainant submits that he is a converted Christian, and he attends church services in Assen. Tamils frequently visit the church. There, the complainant met a compatriot and spoke about his story and reasons behind his asylum request. The complainant submits that, according to his former legal counsel, this compatriot turned out to be an infiltrated agent from the Criminal Investigation Department of Sri Lanka, which was collaborating with the Sri Lanka Embassy in The Hague. The complainant fears thus that the Sri Lanka authorities may have learned about his asylum application.

2.7 On 8 April 2011, the Zwolle District Court decided that the complainant's appeal for review was founded. On 15 April 2011, the Minister for Migration lodged an appeal against the judgment with the Administrative Jurisdiction Division of the Council of State. By a judgment of 20 September 2011, the Administrative Jurisdiction Division declared the appeal to be well founded, overturned the earlier District Court judgment and declared the application for review lodged with the District Court to be unfounded.

2.8 The complainant submits that because he was tortured during the detention in Sri Lanka, he suffers a serious pain in his ankle, back and arms, which forced him to undergo

¹ The complainant told the Sri Lankan Army that he knew the customers and was subsequently arrested together with the three Tamil men. The complainant explains that drivers in Colombo usually claim to know their customers as a form of courtesy.

² Tamil separatist organization that was based in north-eastern Sri Lanka.

³ According to the State party's observations below, the complainant claimed that a ransom was paid for his release.

⁴ The complainant claims that a human smuggler who arranged the transportation took away his documents, including fake passport and boarding passes.

⁵ The complainant claims that his mother-in-law was ill-treated and died three days after she was released, but provided no further information in that regard.

⁶ The complainant notes that his wife did not provide any details with regard to alleged maltreatment by the police.

surgery on his ankle in January 2012.⁷ He claims that his scars were the result of torture, as claimed in the asylum procedure, and that he suffers symptoms indicating a post-traumatic stress disorder.⁸ On 16 November 2012, the Immigration and Naturalization Service rejected his second application for a temporary stay permit submitted on medical grounds. The complainant applied for the judicial review to the Zwolle District Court. On 5 December 2012, a judge granted an interim measure request of the complainant not to be expelled until the judicial review was completed. On 3 September 2014, the District Court declared the application for judicial review to be well founded and ruled, however, that the legal consequences of the decision of the Immigration and Naturalization Service of 16 November 2012 remained in effect.

2.9 On 12 December 2014, the Administrative Jurisdiction Division reviewed the complainant's appeal and declared it manifestly unfounded.

2.10 Lastly, the complainant's third and fourth applications for temporary asylum residence permit were rejected on 13 January 2015 and 31 January 2017, respectively.

2.11 The complainant submits that in August 2016, he decided to return home. In that context, he visited the Sri Lankan Embassy in The Hague to obtain travel documents. He submits that he had to provide detailed information about his family members and on his asylum interviews with the Immigration and Naturalization Service. The complainant submits that he changed his mind and decided not to return to Sri Lanka where he might be subjected to torture or ill-treatment. The complainant claims that shortly after his visit to the Embassy, he was detained by the authorities of the State party.⁹

2.12 On 10 April 2017, the complainant was released from custody, and then went into hiding.

2.13 The complainant asserts that he has exhausted the domestic remedies.

Complaint

3.1 The complainant submits that given that he was already arrested on suspicion of links with three LTTE members, he would face a real risk of cruel, inhuman or degrading treatment if he were returned to Sri Lanka.

3.2 He claims to belong to a group of persons who are at risk of torture by the Sri Lankan authorities upon return because: he is a young male of Tamil origin; he has visible scars and injuries; he left Sri Lanka illegally and would return on an emergency passport from a country where funds were raised for LTTE; he has previously been detained on suspicion of having ties with LTTE; he has applied for asylum in the Netherlands, and he attended the Heroes' Days celebration in the Netherlands, which was organized by LTTE.¹⁰

3.3 The complainant also claims that both the Border Agency of the United Kingdom of Great Britain and Northern Ireland and the Immigration and Refugee Board of Canada have reported that individuals with visible scarring upon arrival to Sri Lanka undergo investigations by the authorities to search for links with LTTE. The complainant additionally explains that, according to the report of the International Truth and Justice Project,¹¹ post-

⁷ Reference is made to medical information from the General Practitioner, dated 27 January 2012 (submitted in Dutch).

⁸ The complainant submitted a medical report by the Institute for Human Rights and Medical Assessment, dated 8 November 2011 (submitted in Dutch).

⁹ No additional information was provided by the complainant in this regard.

¹⁰ Concerning fundraising by LTTE in the Netherlands, the application refers to the following: on 23 October 2011, the Media Centre for National Security of the Sri Lankan Ministry of Defence and Urban Development reported at its website that a Dutch court had sentenced five LTTE activists to serve between 2 and 6 years in prison on the accusation of having raised 130,000,000 euros for LTTE. Dutch police had made the arrests in June 2010 after an investigation into the organization.

¹¹ The International Truth and Justice Project is administered by the Foundation for Human Rights in South Africa and is specialized in the documentation of and the gathering of information related to post-conflict human rights violations in Sri Lanka. Reference is made to the following report: International Truth and Justice Project Sri Lanka, *A Still Unfinished War: Sri Lanka's Survivors of Torture and Sexual Violence – 2009–2015* (July 2015).

war violations by the Sri Lankan security forces are aimed at sowing terror and destabilizing Tamil community members. Within this context, the Government of Sri Lanka is actively involved in the continuation of the system of mistreatment, and fails to hold its security forces accountable.¹²

3.4 Referring to the report of Freedom from Torture,¹³ the complainant alleges that the vast majority of people subjected to detention and torture in Sri Lanka are actual or perceived Tamils involved with LTTE. The report also indicates that many people find out that friends, acquaintances, work colleagues and employers are in some way connected to LTTE when they are themselves detained and interrogated. The authorities tend to assume that people are guilty of being associated with LTTE even if they have unknowingly carried out some mere services for LTTE members. The complainant alleges that several other organizations expressed their concerns that Tamils returning from abroad could be arrested on suspicion of links with LTTE.¹⁴

3.5 The complainant claims that by returning him to Sri Lanka, the Netherlands will breach article 3 of the Convention against Torture.

State party's observations on the merits

4.1 On 18 January 2018, the State party submitted its observations on the merits, providing details of four asylum procedures related to the complainant's application for a temporary asylum residence permit. It also provided information concerning the facts of the case, the applicable Dutch law, the general situation in relation to Tamils and former LTTE members, the Dutch policy on asylum seekers from Sri Lanka and relevant case law.

4.2 The State party submits that the complainant has not satisfactorily demonstrated that the Sri Lankan authorities have ever taken any interest in him, either at present or in the past. The risk factors cited by the complainant do not demonstrate that he would face a real risk of torture in Sri Lanka. The State party does not consider, on the basis of the facts presented, that the complainant has established that there is a real risk or that it is reasonably likely that the Sri Lankan authorities would now regard him as a threat. Thus, it has not been satisfactorily established that the complainant would be subjected to treatment contrary to article 3 of the Convention upon his return to Sri Lanka.

4.3 The State party explains that asylum applications by Sri Lankan Tamils are assessed in the light of the risk factors established by the European Court of Human Rights, including the following: (a) the aliens are known to the Sri Lankan authorities as a member of LTTE or are suspected of taking part in LTTE activities; (b) they have a criminal record or an arrest warrant issued against them; (c) they have escaped from prison or have been released on bail; (d) they have signed a confession or similar document; (e) they have been asked by the Sri Lankan authorities to become an informant; (f) they have scarring; (g) they have to return to Sri Lanka from London or another centre of LTTE fundraising; (h) they left Sri Lanka illegally; (i) they lack identity documents; (j) the Sri Lankan authorities have learned that they have applied for asylum abroad; and (k) they have relatives active in LTTE and the Sri Lankan authorities are aware of this.

4.4 The State party submits that due care was exercised throughout the Dutch asylum procedures in respect of the complainant and due account was taken of article 3 of the Convention. The State party is convinced that the complainant's asylum application was assessed in a careful manner and in view of the legal protection offered at the national level.

¹² On pages 103–104 of the report of the International Truth and Justice Project (*A Still Unfinished War*), an insider from the national security service stated that officials from the military security service in Vavuniya told him that they were actively searching for Tamils who returned from abroad, in order to interrogate them, kidnap them and subject them to torture.

¹³ Reference is made to: Freedom from Torture, *Tainted Peace: Torture in Sri Lanka since May 2009* (August 2015).

¹⁴ The complainant refers to reports from the International Crisis Group, the Society for Threatened People, the Department of State of the United States of America, the Swiss Refugee Council and Amnesty International.

4.5 The State party notes that although the human rights situation in Sri Lanka gives cause for concern, in view of information available from various public sources, the State party maintains that there is no reason to conclude that removal to Sri Lanka would in itself involve a risk of treatment contrary to article 3 of the Convention. Although the situation of Tamils in general and of former LTTE members in particular remains a cause for concern, there is no reason to assume that every Tamil, whether or not they have had links in the past with LTTE, will be subjected to treatment contrary to article 3 of the Convention in Sri Lanka. In this context, the State party maintains that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. The risk must be personal and present and the complainant must demonstrate that there is a foreseeable, real and personal risk of torture.¹⁵

4.6 The State party observes that all the statements made by the complainant have been carefully assessed, resulting in the conclusion that his account in support of his asylum application must be deemed implausible. Although the factual information provided by the complainant – that is, his civil status, ethnic origin, religion and work as the driver of a minibus taxi in Colombo – is deemed credible, the rest of his account, in particular his statements regarding his arrest, subsequent release and departure via the airport at which he had previously been arrested, is deemed to lack credibility. The State party also notes that even if his arrest and detention were considered credible, it would not have affected the outcome of the analysis of the risks he would face in Sri Lanka.

4.7 The State party submits that it does not consider the reasons the complainant gave for leaving Sri Lanka to be credible, particularly when he claimed that he was detained for a month and subjected to torture by the Sri Lankan authorities because he was suspected of having links to LTTE. The State party notes that, even if it is probable that the complainant had been arrested and subjected to torture in the past, it has not been satisfactorily established that he would face a risk of treatment contrary to article 3 of the Convention upon return to Sri Lanka. The State party further notes that alleged torture in the past does not necessarily constitute a present risk of torture and that the complainant must establish that there are substantial grounds for believing that he would risk torture if expelled at present.

4.8 The State party further notes that the complainant's claims in relation to: his travel route and documents; his arrest and suspicion of LTTE activism; his detention and release after payment of a ransom; his visit to the embassy; and the situation surrounding his mother and wife, lacked plausible credibility. The complainant submitted no travel document, airline ticket or indicative evidence that could substantiate his alleged travel route. He provided inconsistent information at various stages of the asylum procedures. He initially stated that he had travelled on a forged passport, whereas later, he claimed to have travelled using a document that belonged to someone who looked like him. The complainant failed to submit the passport or any other document upon his arrival in Romania, although he was in a safe country, where he could have submitted a request for international protection. Consequently, the State party continues, he has chosen not to hand over his passport to a travel intermediary. The fact that he did not submit his passport or any other indicative evidence of his alleged travel route counts against him and undermines the credibility of his story.

4.9 The State party considers it implausible that the complainant would have come under suspicion during a routine identity check of the people in his minibus, simply because he said, out of politeness, that he knew his passengers. The complainant did not carry out any activities for LTTE, nor was he, or any member of his family, a member or sympathizer of the organization. According to his statements, none of his family members belonged to LTTE. Since the State party finds it implausible that the complainant would have been under suspicion, it follows that it is also implausible that he was detained for a month, interrogated and beaten several times by the army on account of his alleged participation in LTTE.

4.10 The State party, commenting on the complainant's statements concerning his detention and torture, submits that they were vague, cursory and conflicting. The State party finds it odd that the complainant, after having been beaten and having broken an ankle, did

¹⁵ Reference is made to: Office of the United Nations High Commissioner for Refugees, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, 21 December 2012.

not consult a doctor following his release on 16 December 2010. The complainant only sought medical assistance once he had arrived in the Netherlands, although he had had the opportunity to do so upon release.

4.11 The State party further refers to the complainant's unhindered departure via Bandaranaike International Airport in Katunayaka, just outside Colombo, and finds this statement implausible. According to the Minister of Foreign Affairs' country report on Sri Lanka dated June 2010, a major fixed checkpoint close to the entrance provided access to the international airport. The State party does not see how the complainant could have left Sri Lanka via this airport without experiencing problems and without having been recognized, given that he had driven to the airport three times a day on average since 1996 and had been released by means of a pay-off shortly before leaving the country, on 16 December 2010. It is implausible that the complainant would have taken such a risk, given that he had been arrested at the checkpoint at the same airport on 20 November 2010. Moreover, at that time, he would have still been walking with great difficulty as a result of the beatings he claims to have suffered not long before his departure, which would certainly have drawn attention to him.

4.12 Regarding the complainant's claims that he had been in close contact with an infiltrated police officer of the Sri Lankan Criminal Investigation Department who was spying in Assen, the State party submits that that issue was duly considered during one of the asylum application processes. In that context, the State party submits that when denying the complainant's asylum application, the Dutch authorities followed the Court request and took into account the information provided by the Dutch General Intelligence and Security Service in relation to its investigation into possible espionage by a purported inspector of the Sri Lankan Criminal Investigation Department.

4.13 Commenting on the complainant's visit to the Embassy of Sri Lanka, the State party notes that the complainant provided inconsistent statements and changed them in order to build up his new asylum application. In this context, the State party finds it strange that he visited the Embassy and spoke to one of its employees about his asylum application although he feared for his relatives back home and for his life, were he to be returned. It is also significant that the complainant was informed in each asylum procedure that his application would be dealt with confidentially and that no information would be shared with his country of origin. The State party fails to see why he would break that confidentiality of his own volition, especially given his stated fear of the authorities.

4.14 The State party comments on the situation of the complainant's family members and notes that the complainant has been unable to provide consistent information on the circumstances of the detention of his mother and wife by the Sri Lankan authorities. The State party also notes that there was a long delay between the complainant's visit to the Embassy of Sri Lanka and the alleged persecution of his family. The complainant also failed to submit his mother's death certificate and to provide any evidence whatsoever that her death was related to any mistreatment.

4.15 Regarding the complainant's medical report, the State party notes that scars alone are insufficient, though they may serve to increase suspicion. At the same time, it cannot be concluded from the report that the scars are (or should be assumed to be) the result of beatings. Accordingly, the medical report cannot be given the significance the complainant wishes to attach to it.

4.16 The State party is convinced that the mere fact that the complainant is of Tamil origin from Sri Lanka is not in itself sufficient to assume that, if he were forcibly returned from the Netherlands, a country where LTTE fundraising takes place, without a national identity card and holding a temporary travel document, he would be at risk of treatment contrary to article 3 of the Convention.¹⁶ The State party notes in this regard that the Sri Lankan authorities are aware that many returnees have left Sri Lanka for economic reasons.

¹⁶ The reference is made to jurisprudence of European Court of Human Rights, *N. and others v. United Kingdom*, Application No. 16458/12, Decision, 15 April 2014, paras. 118–119.

4.17 Regarding the complainant's attendance at the Heroes' Days celebration in the Netherlands, organized by LTTE, the State party believes that the complainant did not plausibly demonstrate that the Sri Lankan authorities were aware of this, but even if they were aware, those activities would be too marginal for him to be considered to be an activist.

4.18 The State party concludes that it has not been plausibly established that the complainant would be subjected to treatment contrary to article 3 of the Convention upon his return to Sri Lanka. Therefore, the communication is unfounded in its entirety and the decision to return the complainant to Sri Lanka does not breach article 3 of the Convention.

Complainant's comments on the State party's observations on the merits

5.1 On 31 January 2019, the complainant commented on the State party's observations and maintained that the Netherlands would violate article 3 of the Convention if it returned him to Sri Lanka.

5.2 The complainant reiterates his arguments that he was arrested by Sri Lankan authorities on 16 November 2010 and accused of transporting insurgents to let them escape the country. He maintained that his relatives were detained and maltreated by the authorities owing to his activities.

5.3 The complainant did not bring any new information and referred to numerous reports on the human rights situation in Sri Lanka, including its bad prison conditions and degrading treatment of detainees.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 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.

6.2 The Committee recalls that in accordance with article 22 (5) (b) of the Convention, it shall not consider any complaint unless it has ascertained that all available domestic remedies have been exhausted. The Committee notes that, in the present case, the State party has not challenged the admissibility of the complaint on this ground.

6.3 As the Committee finds no further obstacles to admissibility, it declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

7.1 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.

7.2 In the present case, the issue before the Committee is whether the return 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.

7.3 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 Sri Lankan authorities, such as the military and the police, in many parts of the country since the conflict

ended in May 2009.¹⁷ However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would personally be 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.

7.4 The Committee recalls its general comment No. 4 (2017), according to which the non-refoulement obligation exists whenever there are “substantial grounds” for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing deportation, either as an individual or as a member of a group that may be at risk of being tortured in the State of destination. The Committee recalls that “substantial grounds” exist whenever the risk of torture is “foreseeable, personal, present and real” (para. 11). Indications of personal risk may include, but are not limited to: (a) the complainant’s ethnic background; (b) political affiliation or political activities of the complainant and/or the complainant’s family members; (c) previous torture; (d) incommunicado detention or other form of arbitrary and illegal detention in the country of origin; and (e) clandestine escape from the country of origin because of threats of torture (para. 45).

7.5 The Committee also recalls that the burden of proof is on the author of the complaint, who must present an arguable case, namely that he or she must submit arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real. However, when the complainant is in a situation where he or she cannot elaborate on his or her case, for instance, when the complainant has demonstrated that he or she has no possibility of obtaining documentation relating to his or her allegation of torture, or is deprived of his or her liberty, the burden of proof is reversed, and it is up to the State party concerned to investigate the allegations and verify the information on which the complaint is based.¹⁸ The Committee further recalls that it gives considerable weight to findings of fact made by organs of the State party concerned; however, it is not bound by such findings and will make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.¹⁹

7.6 In the present case, the complainant claims that he will be detained and tortured in Sri Lanka because: he is a young Tamil; he has visible scars and injuries; he left Sri Lanka illegally and would return with no national identity card from a country where funds were raised for LTTE; he has previously been detained on suspicion of having ties with LTTE; he has applied for asylum in the Netherlands; and he attended the Heroes’ Days celebration in the Netherlands, organized by LTTE. The Committee notes the complainant’s arguments that he was arrested on 20 November 2010 for transporting LTTE members at Bandaranaike International Airport in Katunayaka, just outside Colombo, and later tortured for alleged links with the resistance movement. On 24 December 2010, the complainant was released from detention following a ransom paid by a family friend, who also helped the complainant with his departure from Sri Lanka.

7.7 The Committee takes note of the State party’s submissions that the complainant has failed to provide credible evidence and to substantiate his claims that there was a foreseeable, real and personal risk that he would be subjected to torture by the authorities if returned to Sri Lanka, and that his claims have been thoroughly reviewed by the competent domestic authorities and courts, in accordance with domestic legislation and taking into account the current human rights situation in Sri Lanka.

7.8 The Committee notes that when assessing asylum applications from Sri Lanka, the State party assessed the complainant’s arguments with regard to the risk factors, owing to their alleged links with LTTE. The Committee notes that there is nothing in the present communication to indicate that the complainant or members of his family played any significant role in LTTE or had problems with the Sri Lankan authorities at any point in time.

¹⁷ CAT/C/LKA/CO/3-4, para. 6.

¹⁸ Committee against Torture, general comment No. 4, para. 38.

¹⁹ *Ibid.*, para. 50.

The Committee also refers to the State party's observations that the authorities have thoroughly evaluated all the evidence presented by the complainant, including the medical reports, and in this context, it notes the State party's arguments that it cannot be conclusive that the complainant's scars were caused by beatings.

7.9 Regarding the complainant's exposure in the Netherlands to a police officer of the Sri Lankan Criminal Investigation Department, the Committee notes that the competent State party authorities looked into possible risks and decided that his return to Sri Lanka would not be contrary to article 3 of the Convention. Regarding his attendance at an LTTE event, the Committee notes the State party's arguments that the complainant did not plausibly demonstrate that the Sri Lankan authorities were aware of this, but even if they were, those activities would be too marginal to conclude that he is an activist. The Committee also notes that difficulties faced by the complainant's relatives back in Sri Lanka were not plausibly demonstrated.

7.10 The State party submits that, in the course of four asylum procedures that lasted for six years, the complainant provided conflicting statements without having satisfactorily demonstrated that the Sri Lankan authorities have ever taken any interest in him, and that the risk factors mentioned by him did not lead to a conclusion that he would face a real risk of torture upon returning to Sri Lanka.

7.11 The Committee recalls its jurisprudence according to which the risk of torture must be assessed on grounds that go beyond mere theory, and it reiterates that it is generally for the complainant to present an arguable case. On the basis of all the information contained on file, including on the general situation of human rights in Sri Lanka, the Committee considers that the complainant has not provided sufficient evidence to enable it to conclude that his return to Sri Lanka would expose him to a foreseeable, real and personal risk of torture within the meaning of article 3 of the Convention.

8. 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 violation of article 3 of the Convention.
