



## International Covenant on Civil and Political Rights

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### Human Rights Committee

### Communication No. 2280/2013

#### Views adopted by the by the Committee at its 114th session (29 June-24 July 2015)

<i>Submitted by:</i>	Y (represented by counsel, Arash Banakar)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Canada
<i>Date of communication:</i>	29 July 2013 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 30 July 2013 (not issued in document form)
<i>Date of adoption of Views:</i>	22 July 2015
<i>Subject matter:</i>	Deportation to Sri Lanka
<i>Procedural issues:</i>	Failure to sufficiently substantiate allegations; and incompatibility <i>ratione materiae</i> with the Covenant
<i>Substantive issues:</i>	Right to life; prohibition of torture or cruel, inhuman or degrading treatment; right to liberty and security of person; and right to be free from arbitrary detention
<i>Articles of the Covenant:</i>	Articles 6 (1), 7 and 9 (1)
<i>Articles of the Optional Protocol:</i>	Articles 2 and 3



## Annex

### **Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (114th session)**

concerning

#### **Communication No. 2280/2013\***

*Submitted by:* Y (represented by counsel, Arash Banakar)

*Alleged victim:* The author

*State party:* Canada

*Date of communication:* 29 July 2013 (initial submission)

*The Human Rights Committee*, established under article 28 of the International Covenant on Civil and Political Rights,

*Meeting* on 22 July 2015,

*Having concluded* its consideration of communication No. 2280/2013, submitted to the Human Rights Committee on behalf of Y under the Optional Protocol to the International Covenant on Civil and Political Rights,

*Having taken into account* all written information made available to it by the author of the communication and the State party,

*Adopts* the following:

#### **Views under article 5, paragraph 4, of the Optional Protocol**

1.1 The author of the communication is Y, a Sri Lankan national born on 5 May 1984. He claims that the State party would violate his rights under articles 6 (1), 7 and 9 (1) of the Covenant were he to be deported to Sri Lanka. He is represented by counsel, Arash Banakar.

1.2 On 30 July 2013, pursuant to rule 92 of the Committee's rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to refrain from deporting the author to Sri Lanka while the communication was being examined. On 31 July 2013, the author informed the Committee that the State party had cancelled his removal to Sri Lanka, in accordance with the Committee's request.

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\* The following members of the Committee participated in the consideration of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

**Facts as presented by the author**

2.1 The author is of Tamil ethnicity and professes the Hindu faith. He lived with his family in the city of Jaffna, in the Northern Province of Sri Lanka, until 1995, when they moved to the town of Mallavi, Vanni district, also in the Northern Province. He used to work as a tractor driver and mason. In August 2006, the author and his family moved to Sithamparapuram, Vavuniya, after repeated harassment and threats from members of the Liberation Tigers of Tamil Eelam (LTTE), who wanted to recruit him. The author claims, however, that in that new location he was continuously harassed by the Sri Lankan Army and the People's Liberation Organization of Tamil Eelam (PLOTE) during their search operations, and that PLOTE forced him to work as a mason for free.

2.2 The author argues that on 7 May 2008, he was arrested by the Army on his way home from work. He claims that he was taken to the military Joseph Camp in Vavuniya, where he was held for 18 days; that he was tortured during interrogation under the suspicion that he was an LTTE member; and that he was released only after his father had paid a bribe to the Army. Since the author refused to work for PLOTE, on 23 January 2009 it abducted him for two days, during which he was assaulted and threatened. In June 2009, members of PLOTE approached the Army and falsely denounced the author as an LTTE member. Subsequently he was arrested by the Army and kept in detention for four days, during which he was interrogated and beaten. His father managed to secure his release by paying a bribe to someone who could influence PLOTE.

2.3 The author claims that, since he continued to be harassed by members of PLOTE and forced to work for free, he made a verbal complaint to the police about them. In reprisal, PLOTE managed to convince the Army to arrest him on 1 December 2009. He was taken to the Joseph Camp, brutally beaten and detained for one week. Once again, his father paid a bribe in order to secure his release. Upon release, the author was told to leave the area and withdraw his complaint. In addition, members of PLOTE visited his family home and his neighbours in Vavuniya, searching for him, and told his family that they would kill him.

2.4 As he had applied for and obtained a Sri Lankan passport, on 22 December 2009 the author left Sri Lanka by plane, with a Cuban visa. He claims that a smuggler bribed one of the airport agents, who let the author pass through the security checks without inspection. He went through different countries and on 23 March 2010, he entered the United States of America, where he applied for asylum.

2.5 The author decided to travel to Canada where he had cousins who could support him financially. On 9 June 2010, he entered the State party and lodged a refugee application. On 30 July 2010, he submitted his Personal Information Form to the Immigration and Refugee Board (IRB). The author claimed that he had a well-founded fear of persecution in Sri Lanka due to his Tamil ethnicity, and that if he returned there he would risk being subjected to torture or other cruel, inhuman or degrading treatment and his life would be at risk. He pointed out that he had been arbitrarily arrested by the Sri Lankan Army under suspicion of being an LTTE member and subjected to torture while in detention. Likewise, he had been harassed, abducted for two days and had suffered ill-treatment by members of PLOTE.

2.6 On 22 September 2011, the author informed IRB that after his arrival in the State party, he had learned that his family had moved to Jaffna to avoid harassment by members of PLOTE, who had attempted to kidnap one of his brothers and continued to search for him. In Jaffna, his family had been interrogated by the Army under suspicion of being LTTE members, since they had resided in the Vanni area during the period of the armed conflict. During the refugee proceedings he also submitted documentation confirming his identity, newspaper articles about Tamils deported to Sri Lanka, and a letter dated 18 August 2011, issued by a doctor from a medical clinic in Vavuniya, stating that he had

received medical treatment twice, once on 25 May 2008 when he had an injury to his head, which was bleeding, and the second time on 9 December 2009, when he had injuries on his body and a fever.

2.7 On 9 December 2011, IRB rejected the author's request for refugee protection. It stated that with respect to credibility, for the purpose of the hearing, it would accept the author's allegations as true, but pointed out that the armed conflict in Sri Lanka was over and that that was a durable change. It noted that in the hearing, he declared that he had never been associated with LTTE; that he had been detained and then released by the Army, which suggested that he was not considered a member of LTTE; that the Government had released thousands of LTTE members; and that, given that context, he was not at risk of persecution by the Army as a result of any perceived association with LTTE. As for PLOTE, IRB concluded that the author might face extortion by PLOTE in Vavuniya and be at risk of harm if he refused to work for free as a mason; that PLOTE had evolved into an essentially criminal organization and was not a force or was a diminishing force in Jaffna; and that it was hard to believe that PLOTE members in Jaffna would know of the organization's actions against the author in Vavuniya.<sup>1</sup> Accordingly, IRB concluded that the author would be safe from PLOTE in Jaffna or Colombo.

2.8 In its decision, IRB took note of the documentation provided by the author and pointed out, inter alia, that the 2010 Office of the United Nations High Commissioner for Refugees (UNHCR) Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka state that "given the cessation of hostilities, Sri Lankans originating from the north of the country are no longer in need of international protection under broader refugee criteria".<sup>2</sup> IRB also noted that recent analyses had indicated that those conditions had changed, but according to a response to an information request, the allegations had come from rights groups that had provided few substantive details about their allegations and that therefore, there was no reason to conclude that the 2010 UNCHR Guidelines were no longer valid.

2.9 IRB also stated that the author's allegation that he would be at risk of apprehension upon arrival at the airport as a failed asylum seeker was only supported by sources that referred to a group of Tamil asylum seekers who were deported by the United Kingdom of Great Britain and Northern Ireland in September 2011. However, IRB considered that those sources basically expressed concern about the treatment of failed asylum seekers in Sri Lanka without providing enough supporting details. The reports of the United Kingdom and the Canadian High Commission indicated that if failed asylum seekers had no connection to LTTE and were not criminals, they would not face any risk while entering Sri Lanka.

2.10 The author lodged an application for leave and for judicial review before the Federal Court against the IRB decision. He contended, inter alia, that IRB had relied on a section of the 2010 UNHCR Guidelines that was broad and difficult to interpret; that it had ignored or misrepresented documentary evidence regarding the risk and danger he would face if deported, as well as the events that his family had been through; and that there was nothing in the documentary evidence subsequent to the 2010 UNHCR Guidelines to suggest that its conclusions were still valid.

2.11 On 20 June 2012, the author also applied for permanent residence on humanitarian and compassionate grounds to the Department of Citizenship and Immigration (Citizenship

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<sup>1</sup> IRB referred to the United States Department of State, *2010 Human Rights Report: Sri Lanka*, 8 April 2011 and Danish Immigration Service, *Human Rights and Security Issues concerning Tamils in Sri Lanka: Report from Danish Immigration Service's fact-finding mission to Colombo, Sri Lanka. 19 June to 3 July 2010*, p. 13.

<sup>2</sup> See [www.refworld.org/docid/4c31a5b82.html](http://www.refworld.org/docid/4c31a5b82.html).

and Immigration Canada). He claimed that, as he was Tamil and a failed asylum seeker, he would be at risk of hardship if returned to Sri Lanka.

2.12 On 31 August 2012, the Federal Court dismissed the author's application for judicial review. The Court agreed with the IRB findings that the end of the armed conflict had produced a change of conditions in Sri Lanka such that the author could return to his country of origin and live safely in Jaffna or Colombo. In its decision, the Federal Court stated:

The Court agrees with the respondent and notes that the Board clearly examined documentary evidence and provided a comprehensive explanation as to why it chose to prefer certain documents over others provided by the applicant. Although the Court agrees that some of the documentary evidence on record was more recent than the UNHCR document relied upon by the Board, the Court notes that the Board acknowledged that there was documentary evidence that was more recent than the UNHCR document but explained why it determined that the information in the UNHCR document was still valid.

The Court is also of the opinion that it was open for the Board to find that the documentary evidence did not support the applicant's allegation ... Indeed, the evidence demonstrates that the applicant was not a criminal, and did not have connections to the LTTE ... Further, the [Sri Lanka Army] would not likely have released the applicant during 2009 in exchange for a bribe if it really believed that the applicant was associated with the LTTE.

2.13 On 24 December 2012, the author filed a pre-removal risk assessment (PRRA) application before Citizenship and Immigration Canada. The author claims that he provided documentary evidence issued after the adoption of the IRB decision, which indicated that the situation in Sri Lanka had become more perilous for young male Tamils from northern Sri Lanka and for failed asylum seekers.

2.14 On 30 April 2013, Citizenship and Immigration Canada dismissed the author's humanitarian and compassionate grounds and PRRA applications. The PRRA officer noted in his decision that he had reviewed and considered the country condition reports and articles submitted in support that post-dated the IRB hearing and decision. Several of the reports and articles indicated that political activists, including those who had been politically active abroad, human rights defenders, civil activists, journalists, and Tamils with an actual or perceived association with LTTE were at risk of forced disappearance, torture and arrest. He did not find that the applicant had sufficiently tied those articles to a personal risk. The officer stated that the author had failed to provide sufficient objective evidence to corroborate his claims that he would be at risk as a failed asylum seeker. The officer noted that he had also reviewed publicly available information on the current country conditions in Sri Lanka. While acknowledging that impunity and human rights abuses continued to be serious issues, he did not find that the conditions had changed significantly since the IRB decision to put the applicant at risk as defined in section 96 or 97 of the Immigration and Refugee Protection Act.<sup>3</sup>

2.15 On 8 July 2013, the Canada Border Services Agency informed the author that he would be removed to Sri Lanka on 31 July 2013. On 23 July 2013, the author filed two

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<sup>3</sup> The PRRA decision refers to the United States Department of State, *2011 Human Rights Report: Sri Lanka*, 24 May 2012; United Kingdom: Home Office, *Operational Guidance Note: Sri Lanka*, April 2012; Amnesty International, *Amnesty International 2012 Annual Report – Sri Lanka*, 24 May 2012; and Freedom House, *Freedom in the World 2012 – Sri Lanka*, 22 August 2012.

applications for leave and for judicial review to the Federal Court against the decisions that dismissed his humanitarian and compassionate grounds and PRRA applications. At the time the communication was submitted to the Committee, his applications for leave to appeal and judicial review were pending.

2.16 On 26 July 2013, the author also filed a motion for a judicial stay of removal before the Federal Court, in connection with PRRA. On 30 July 2013, the Federal Court refused the author's motion for a judicial stay of removal.

### **The complaint**

3.1 The author contends that his deportation to Sri Lanka by the State party would constitute a violation of articles 6 (1), 7 and 9 (1) of the Covenant. He claims that he faces a considerable risk of being arbitrarily detained, tortured and even killed.

3.2 The author holds that the State party's authorities arbitrarily ignored documentary evidence that supported his claims of persecution if returned to Sri Lanka or selectively considered passages of the documentary evidence against his allegations. Hence the State party has failed to assess adequately the risk to which he would be subjected if returned.

3.3 IRB relied in its decision on the 2010 UNHCR Guidelines and arbitrarily failed to give due consideration to more recent documentary evidence that indicated that those Guidelines were outdated. It was unreasonable to find that the author would not be at risk if deported in spite of the fact the he had been arrested, detained and ill-treated by the Army. The author claims that his subsequent releases by the Army did not diminish the fact that he was perceived as a person with links to LTTE. Furthermore, the risk of persecution had become even prominent after living in Canada and applying for asylum. The author claims that even if the IRB assessment were correct at the time of its decision in December 2011, the evidence available at the time his communication was submitted to the Committee showed that there had been a significant change of circumstances since then.

3.4 Although the PRRA officer was obliged to examine the most recent sources of information in conducting the risk assessment, his decision omitted the most recent UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka, dated 21 December 2012. Those Guidelines indicate, based on information provided by prominent non-governmental organizations (NGOs),<sup>4</sup> that failed asylum seekers still faced persecution by the authorities upon arrival in Sri Lanka. In particular, the PRRA assessment selectively considered part of the documentary evidence and failed to recognize that the author would be perceived as an individual with ties to LTTE. In the light of the conflicting information contained in the documentary evidence regarding the risk of failed asylum seekers of Tamil ethnicity, the PRRA officer should explain why he found that some elements of the documentary evidence, against his claims, were given preference.

3.5 The author points out that the Committee against Torture concluded that allegations of the widespread use of torture in police custody were continued and consistent.<sup>5</sup> He contends that several persons of Tamil ethnicity that returned to Sri Lanka, including failed

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<sup>4</sup> The author refers to Human Rights Watch, "UK: Halt Deportations of Tamils to Sri Lanka. Credible Allegations of Arrest and Torture upon Return", 24 February 2012; Human Rights Watch, "UK: Suspend Deportation of Tamils to Sri Lanka. Further Reports of Torture of Returnees Highlight Extent Problem", 29 May 2012; Amnesty International, "Sri Lanka: Briefing to Committee against Torture", October 2011; and the Asian Human Rights Commission report on police torture cases 1998-2011, Sri Lanka, case 299, p. 379.

<sup>5</sup> See the concluding observations of the Committee against Torture (CAT/C/LKA/CO/3-4), para. 6.

asylum seekers who had perceived links with the LTTE, were detained upon arrival by the police and the Army and subjected to torture.<sup>6</sup>

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

4.1 On 4 March 2014, the State party provided observations on admissibility and the merits of the communication. It maintains that the communication should be declared inadmissible on the grounds of incompatibility with the provisions of the Covenant and non-substantiation.

4.2 The author's claims under article 9 (1) of the Covenant are inadmissible, as they are incompatible with the provisions of the Covenant pursuant to article 3 of the Optional Protocol.<sup>7</sup> The State party submits that it does not have an obligation under article 9 (1) to refrain from removing an individual to another State in which he or she faces a real risk of arbitrary detention, and that any alleged risk of arbitrary detention in Sri Lanka should only be considered as part of the factual context for the author's allegations under articles 6 and 7 of the Covenant.

4.3 The author's allegations under articles 6 and 7, as well as article 9, are inadmissible pursuant to article 2 of the Optional Protocol. The author's allegations before the Committee are based on the same facts and evidence as those that were presented to the Canadian authorities. All the authorities carried out a thorough review of the author's submissions and evidence. There is nothing in that evidence or the evidence the author submitted in his communication to suggest that he is at personal risk of death, torture or other similarly serious violations of his human rights upon return to Sri Lanka.

4.4 It is not the role of the Committee to re-evaluate facts and evidence unless it is manifest that the domestic authorities' evaluation was arbitrary or amounted to a denial of justice. Nothing in the author's communication suggests arbitrariness or denial of justice. Nevertheless, should the Committee decide to re-evaluate the facts and evidence of the case, the State party submits that the author has not established that he would be at personal risk of treatment that violates the provisions of the Covenant if returned to Sri Lanka.

4.5 Should the Committee consider the author's communication to be admissible, the State party maintains that the communication does not disclose a violation of the Covenant. It is not sufficient for the author to show that general human rights abuses continue to exist in Sri Lanka without providing a basis for believing that he is at real and personal risk of death, torture or other cruel, inhuman or degrading treatment or punishment. He has not established his personal risk through any objective evidence and his alleged experiences in Sri Lanka in 2008 and 2009, even if they were accepted as true, do not provide support for his allegations of future risk when considered in the light of the objective reports of the current human rights situation in Sri Lanka.

4.6 IRB reviewed all the documentary evidence submitted to it and decided, *inter alia*, that the reports on the conditions in Sri Lanka did not support the author's allegation that all young Tamil males from the north who return to Sri Lanka faced a real risk of torture or death, since the Sri Lankan authorities were at the time interested in Tamils who had actively supported and continued to support LTTE; that the author, as a failed asylum seeker, did not face a serious risk of being persecuted by the Sri Lankan Army due to any

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<sup>6</sup> See note 4 above. The author also refers to a report issued by Freedom from Torture in September 2012, as well as articles published in newspapers.

<sup>7</sup> The State party refers to the Committee's general comments No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, paras. 12-13, and No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 62.

perceived association with LTTE; and that he would be safe from PLOTE in Jaffna and Colombo. Later, the Federal Court found that the author did not provide any convincing and compelling evidence to contradict the IRB decision.

4.7 The State party informs the Committee that on 12 September 2013, the author's application for leave and for judicial review against the humanitarian and compassionate grounds decision was dismissed by the Federal Court.

4.8 As to the PRRA proceedings, the State party informs the Committee that on 24 October 2013, the author's application for leave and for judicial review was dismissed by the Federal Court. It points out that in general, the purpose of PRRA is to assess, based on new facts and evidence, whether there have been any new developments since the IRB determination that could affect or change the risk assessment. Hence, PRRA is not intended to be another level of appeal of an IRB decision. In the present case, however, the author used his PRRA application to challenge the IRB decision, and made the same claims as he had made before the Federal Court, enclosing mainly country reports and media articles, mostly from 2012, which addressed the situation of Tamils in Sri Lanka generally. The PRRA officer concluded that the author had failed to demonstrate that he matched the profile of the people the reports and articles identified as being at risk or to establish that his profile would be of interest to the Sri Lankan authorities.

4.9 The State party notes that the author has relied on the statement at the beginning of the IRB decision, which indicates that "with respect to credibility, for the purposes of this hearing, the panel will accept the allegations of the [author] as true". However, the State party maintains that the credibility of the author or the truth of his allegations was never definitively ruled on by IRB or any other authority, and that as a result of its finding that there had been a durable change in country conditions, IRB concluded that it was unnecessary for it to make a determination on the author's accounts. The State party points out that the communication contains several inaccuracies, and that at the IRB hearing or in his Personal Information Form, the author testified that he never worked for PLOTE; that he was arrested by the Army on three occasions; and that his first arrest was a result of being caught up in a general round-up along with 18 other persons as he was walking home from work.

4.10 The State party maintains that objective country reports indicate that there are serious human rights violations in Sri Lanka, including torture, disappearance and arbitrary detention; that a disproportionate number of victims are Tamils, who are detained by the authorities;<sup>8</sup> and that Tamil males who are detained by the authorities and are suspected of having ties to LTTE or otherwise opposing the Government are at risk of persecution and torture.<sup>9</sup> Against this background, the State party submits that not all young Tamil males from northern Sri Lanka face a real and personal risk of persecution by the Sri Lankan authorities,<sup>10</sup> and that reliable reports indicate that the persons who may be in need of

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<sup>8</sup> The State party refers to the concluding observations of the Committee against Torture, see note 5 above; the 2012 UNHCR Guidelines, p. 5; United States Department of State, *2012 Country Reports on Human Rights Practices – Sri Lanka*, 19 April 2013, as well as to NGOs reports such as Amnesty International, *Amnesty International 2013 Annual Report – Sri Lanka*, 23 May 2013; Freedom House, *Freedom in the World 2013 – Sri Lanka*, 10 June 2013; and Human Rights Watch, *World Report 2013 – Sri Lanka*, 31 January 2013.

<sup>9</sup> The State party refers to the 2012 UNHCR Guidelines, pp. 17-18; the United States Department of State, *2012 Country Reports*; and Human Rights Watch, "Sri Lanka: No progress 4 years on", 20 May 2013.

<sup>10</sup> The State party refers to the 2012 UNHCR Guidelines, p. 26; United Kingdom: Home Office, *Operational Guidance Note: Sri Lanka*, July 2013, para. 3.9.21; and a decision of the Australia Refugee Review Tribunal (Case No. 1304427, [2013] RRTA 689, 11 October 2013).



international protection include certain opposition politicians, human rights activists, journalists, women and children, and persons suspected of having certain links to LTTE.<sup>11</sup> In relation to the case of persons suspected of having certain links to LTTE, the State party maintains that the link should be significant and concrete.<sup>12</sup>

4.11 The State party maintains that the author has not demonstrated that he is a person who is suspected of having significant and concrete links with LTTE. His own accounts show that the Army never arrested or detained him on the basis of the Army's own belief in his association with LTTE. Two of the three arrests were as a result of PLOTE using its influence with the Army to arrest him as retribution for his unwillingness to do free masonry work for PLOTE and for having filed a complaint against PLOTE with the police. On the other occasion, he was not the sole target of the Army; rather he was one of 18 people detained in a general round-up. On all those occasions, he was released by the Army after his father paid a bribe. Moreover, he was able to obtain a Sri Lankan passport in 2009, without any problem.

4.12 The State party submits that the author has not established that he is at risk of persecution in Sri Lanka as a failed asylum seeker. There is no information that indicates that a Sri Lankan Tamil who is a failed asylum seeker would be at risk simply by returning to Sri Lanka. Reports on the human rights situation in Sri Lanka indicate that the police or the military in certain areas may briefly interview and/or detain some returning Tamil individuals within the first weeks after their arrival.<sup>13</sup> However, there is no systematic detention of returning Tamils at the airport in Colombo, and the authorities' interest in returning Tamils appears to be with respect of those who may, owing to their political activities in Sri Lanka or in the diaspora, be perceived as a risk to the unitary Sri Lankan State or its Government.

4.13 The State party notes that the author's communication has not specifically made allegations of persecution by PLOTE before the Committee; that PLOTE is a non-State actor that, with the end of the civil war, has evolved into a criminal organization engaged in the extortion of civilians to supplement its dwindling resources; and that the even if the author would face a risk of serious harm from that group upon return to Sri Lanka, he has not provided any evidence to show that the Sri Lankan authorities are unwilling or unable to protect him from PLOTE.<sup>14</sup> Furthermore, even if that were the case, the risk would be from the local members of PLOTE in and around Vavuniya, where the author lived between 2006 and 2009. Therefore, he would have an internal flight alternative, with respect to any arguable risk posed by PLOTE, to either Jaffna or Colombo.<sup>15</sup> In that respect, the State party notes that reports on country conditions in Sri Lanka indicate that the nature and influence of PLOTE has changed since 2009: its ties with the Sri Lankan authorities have been significantly reduced; its operations are mainly focused on the Northern Province; and its force has diminished to the point that the 2012 UNHCR Guidelines contain barely any information on it, noting that it is difficult to find information regarding the current activities of groups such as PLOTE.<sup>16</sup>

<sup>11</sup> The State party refers to the 2012 UNHCR Guidelines, pp. 26-37.

<sup>12</sup> The State party refers to the 2012 UNHCR Guidelines, pp. 26-28.

<sup>13</sup> The State party refers to the 2012 UNHCR Guidelines, p. 7-8; and the United Kingdom: Home Office, *Operational Guidance Note: Sri Lanka*, July 2013, para. 6.1-6.3.

<sup>14</sup> The State party refers to the Committee's jurisprudence in communication No. 1302/2004, *Dawood Khan v. Canada*, decision adopted on 25 July 2006, para 5.6.

<sup>15</sup> The State party refers to the 2012 UNHCR Guidelines, p. 5; and United Kingdom: Home Office, *Operational Guidance Note: Sri Lanka*, July 2013, para. 2.2.16.

<sup>16</sup> The State party refers to the 2012 UNHCR Guidelines; United States Department of State, *2012 Country Reports*; Pulitzer Center on Crisis Reporting, Sri Lanka, "Untold Stories: Paramilitary

4.14 The State party submits that the principle that individuals must seek to minimize their risk of harm, where possible, through internal relocation or resettlement within their own State or internal flight alternative is well-established in international refugee law,<sup>17</sup> as recognized by the jurisprudence of international human rights bodies and courts.

#### **Author's comments on admissibility and the merits**

5.1 On 7 November 2014, the author submitted his comments on admissibility and the merits. The author informs the Committee that in April 2014, he submitted a second application for permanent residence on humanitarian and compassionate grounds to Citizenship and Immigration Canada; that on 10 September 2014, his application was dismissed; and that on 1 October 2014, he filed an application for leave and for judicial review to the Federal Court, which was pending at the time that his comments were submitted to the Committee.

5.2 The author argues that in general, IRB cannot make a determination concerning a refugee claim without making a determination as to the credibility of the claimant's allegations. Accordingly, it should be assumed that IRB made a determination concerning the credibility of his accounts and considered them as true.

5.3 The author contends that recent reports on the human rights situation in Sri Lanka indicate that significant and concrete links with LTTE are not required for a person to be at risk of persecution if returned to Sri Lanka. Instead, individuals of Tamil ethnicity with only a minimal or merely suspected link to LTTE are at risk of persecution.<sup>18</sup> He reiterates that the fact that he is a failed asylum seeker of Tamil ethnicity will lead the Sri Lankan authorities to suspect that he has links to LTTE.

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

##### *Consideration of admissibility*

6.1 Before considering any claims contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under any other procedure of international investigation or settlement.

6.3 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 observes that the author has filed numerous applications of a different nature to prevent his deportation to Sri Lanka; that his refugee application was finally dismissed by the Supreme Court decision of 31 August 2012; and that within the PRRA proceedings, on 30 July and 24 October 2013, the Federal Court also dismissed the author's motion for a stay of removal and his application for leave and for judicial review against the PRRA decision, respectively.

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Politics", 8 April 2009; and International Crisis Group, *Sri Lanka's North I: The denial of minority rights*, 16 March 2012, Asia Report No. 219, p. 12.

<sup>17</sup> The State party refers to the UNHCR guidelines on international protection: "Internal Flight or Relocation Alternative" within the Context of article 1(A)2 of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees.

<sup>18</sup> The author refers to Asylum Research Consultancy, "Sri Lanka country of origin information (COI) Query Response", 19 August 2014; and Freedom from Torture, *Freedom from Torture submission to the Human Rights Committee for the fifth periodic review of Sri Lanka in October 2014*, pp. 6-7.

Accordingly, the Committee considers that it is not precluded by the requirements of article 5 (2) (b) of the Optional Protocol from examining the present communication.

6.4 The Committee takes note of the State party's argument that the author's claims under articles 6 (1) and 7 of the Covenant should be declared inadmissible owing to insufficient substantiation. The Committee observes that the author has explained the reasons why he feared being returned to Sri Lanka, based mainly on the events he went through prior to his departure from Sri Lanka, together with his personal circumstances as a Tamil and a failed asylum seeker. The Committee also notes that the author has provided documentary evidence in support of his claims, which should be considered on the merits. The Committee therefore finds this part of the communication admissible.

6.5 The Committee notes the author's allegations under article 9 (1) of the Covenant that he would be at risk of arbitrary detention upon return to Sri Lanka. The Committee also notes the State party's argument that its non-refoulement obligations do not extend to a potential breach of this provision. The Committee considers that the author has failed to substantiate, for the purpose of admissibility, how this claim would raise a separate issue from his claims under articles 6 and 7 of the Covenant. Accordingly, the Committee considers that he has failed to sufficiently substantiate this claim for the purpose of admissibility and concludes that this part of the communication is inadmissible pursuant to article 2 of the Optional Protocol.

6.6 The Committee declares the communication admissible in so far as it appears to raise issues under articles 6 (1) and 7 of the Covenant, and proceeds to their consideration on the merits.

#### *Consideration of the merits*

7.1 The Human Rights Committee has considered this communication in the light of all the information received, in accordance with article 5 (1) of the Optional Protocol.

7.2 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 when 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 (para. 12). The Committee has also indicated that the risk must be personal,<sup>19</sup> and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.<sup>20</sup> Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.<sup>21</sup>

7.3 The Committee notes the author's claims that, if he were returned to Sri Lanka, he would face a risk of persecution as a young Tamil from northern Sri Lanka with perceived links to LTTE and as a failed asylum seeker; and that the State party's authorities arbitrarily ignored documentary evidence that supported his claims of persecution and did not give sufficient weight to the fact that prior to his departure from his country of origin he was

<sup>19</sup> See communications No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2; No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006, para. 7.2; No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010, para. 7.3; No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010, para. 7.2; and No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6.

<sup>20</sup> See communications No. 2007/2010, *X v. Denmark*, para. 9.2; and No. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

<sup>21</sup> See communications No. 2007/2010, para. 9.2; and No. 1833/2008, para. 5.18.

allegedly detained by the Army on three occasions under suspicion of being an LTTE member, that he was tortured and ill-treated while in detention, and that his family continued to be harassed by the Army after he left his country.

7.4 The Committee also notes the State party's arguments that its authorities reviewed all the documentary evidence submitted to them; that objective and reliable reports indicate that there are serious human rights violations in Sri Lanka; that not all young Tamil males from northern Sri Lanka face a real and personal risk of persecution by the authorities but only those who are suspected of having links to LTTE; and that the author has not demonstrated that he is a person who is suspected of having significant and concrete links with LTTE.

7.5 The Committee recalls its jurisprudence that important weight should be given to the assessment 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> and that it is generally for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists.<sup>23</sup>

7.6 In the present case, the Committee notes that the author's claims focus mainly on the assessment of the documentary evidence carried out by the authorities, arguing that the evidence was not adequately taken into account, and that at least some reports appear to conclude that even a minimal or merely suspected link to LTTE would be enough to put an individual at risk of persecution in Sri Lanka. The Committee observes that reports on the human rights situation in Sri Lanka indicate that despite the changes that have taken place, human rights violations, including torture, continue to exist; and that, inter alia, certain individuals of Tamil ethnicity who are suspected of having links to LTTE may be in need of international protection. It also observes that the author does not argue that he was a member of LTTE or that he has participated, supported or been involved in the activities of LTTE in any manner, rather he submits that his three detentions by the Army, his Tamil ethnicity and his condition as a failed asylum seeker constitute sufficient elements to conclude that he would be perceived as a person with links to LTTE. Against this background, IRB and the Federal Court refused the author's refugee application since they considered that the author failed to demonstrate that he had a connection to LTTE. Subsequently, within the PRRA proceedings, the immigration authorities found that the author did not show that he had a perceived association with LTTE. In examining those applications, the authorities reviewed the author's allegations, taking into due consideration reports from several States and NGOs that provided information concerning the situation of Tamils in Sri Lanka. The author disagrees with the decisions reached. However, he has failed to explain why those decisions are manifestly unreasonable or arbitrary, for instance due to their failure to take properly into account a relevant risk factor. Accordingly, the Committee cannot conclude that the removal of the author to Sri Lanka would constitute a violation of articles 6 (1) and 7 of the Covenant.

8. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the author's removal to Sri Lanka would not violate his rights under articles 6 and 7 of the Covenant.

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<sup>22</sup> See communications No. 2007/2010, para. 9.2; and No. 1833/2008, para. 5.18.

<sup>23</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.