



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3685/2019*, **

<i>Communication submitted by:</i>	S.T. (represented by counsel, Catherine Holbeche)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Australia
<i>Date of communication:</i>	9 December 2019 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 11 December 2019 (not issued in document form)
<i>Date of adoption of decision:</i>	19 July 2023
<i>Subject matter:</i>	Deportation to Sri Lanka
<i>Procedural issues:</i>	Substantiation of claims; admissibility <i>ratione materiae</i>
<i>Substantive issues:</i>	Torture; cruel, inhuman or degrading treatment or punishment; arbitrary detention; non-refoulement
<i>Articles of the Covenant:</i>	7 and 9 (1)
<i>Articles of the Optional Protocol:</i>	2 and 5 (2)

1.1 The author of the communication is S.T., a national of Sri Lanka born on 27 March 1987. She claims that the State party would violate her rights under articles 7 and 9 (1) of the Covenant if it were to deport her to Sri Lanka. The Optional Protocol entered into force for the State party on 25 December 1991. The author is represented by counsel.

1.2 On 11 December 2019, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteurs on new communications and interim measures, requested the State party not to expel the author to Sri Lanka while the communication was being considered. On 28 July 2021, the State party requested that the interim measures be lifted. On 20 January 2022, the Committee, acting through its Special Rapporteurs on new

* Adopted by the Committee at its 138th session (26 June–26 July 2023).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Héléne Tigroudja and Imeru Tamerat Yigezu.



communications and interim measures, decided to reject the State party's request and to maintain its request for interim measures.

Facts as submitted by the author

2.1 The author is of Tamil origin and was born in Jaffna, Sri Lanka. Two of her brothers (K.T. and T.T.) were granted protection visas in Australia, in 2009 and 2019 respectively. One of her sisters (P.T.) resides in France and another sister (V.T.) lives in Sri Lanka with her husband. On 14 July 2006, the author's father was killed, allegedly by the Sri Lanka Army, for his reputed links to the Liberation Tigers of Tamil Eelam (LTTE). On the same day, the author's older brother, K.T., was taken into custody for a month. After her father's funeral, the author and her family members were held in the custody of the Sri Lanka Army. The author witnessed and experienced torture and sexual abuse and was interrogated about her father's involvement with LTTE. When she was released, she was told that the Sri Lanka Army would "come for her again" and, for approximately one month, her family was frequently interrogated and physically abused. On an unspecified date, the author posted a surety as a guarantee that her brother K.T. would not leave Sri Lanka.¹ Her mother urged her and her two brothers to escape. In 2007, the author and her brother T.T. fled to India, where they first stayed in a refugee camp. However, they were informed at the camp that they could not register as refugees as they were too young. They therefore went to live with their grandmother, in India, for five years and with irregular legal status. In approximately 2009, the author's mother told the author that the Sri Lanka Army had "maintained control" over her and that K.T. had moved to Australia and had been granted a protection visa.

2.2 The author and T.T. lived in constant fear owing to their irregular legal status in India, which prompted their move to Australia. On 11 May 2012, the author arrived in Australia, together with T.T., as an unauthorized maritime arrival. On 4 August 2012, she lodged an application for a protection visa, claiming to fear harm and persecution in Sri Lanka from the Sri Lanka Army for suspected involvement with LTTE. Specifically, she claimed that her father had been shot by the Sri Lanka Army for his reputed links to LTTE, that she and members of her family had been taken by the Army for investigation immediately after her father's funeral, that she had been questioned by the Army about her connections to LTTE and that she had been told by the Army that her father had been shot because her family supported LTTE. In addition, she claimed that she feared harm from paramilitary groups, including the Eelam People's Democratic Party, and that she feared returning to Sri Lanka as a failed asylum-seeker, since she had left the country illegally.

2.3 On 14 August 2013, the Department of Immigration and Border Protection of Australia rejected the author's application for a protection visa. It did not consider credible the author's claims that the Sri Lanka Army had interrogated her and her family and that it had "maintained control" over her family's home since her departure.

2.4 The author appealed the decision to the Refugee Review Tribunal, claiming that she feared serious harm owing to her Tamil ethnicity, the political opinions imputed to her as a suspected LTTE supporter owing to her father's suspected involvement with LTTE and her membership in a particular social group, namely of Sri Lankan nationals who had failed in seeking asylum from Western countries. At the hearing, held on 3 December 2014, the author stated that her father, one of her sisters and both of her sisters' husbands had been involved with LTTE and that, while living in India, she had helped to provide medical funds to LTTE. Following the hearing, she provided a letter from a foundation stating that she had been raped by the Sri Lanka Army and suffered from post-traumatic stress disorder. She stated that she

¹ In her comments on the State party's observations, the author specifies that in approximately 2005, when she was 18 years old, her brother K.T. was arrested. She states that she does not know the details of what the authorities said or asked of K.T. After he had been detained for a while, she went to the authorities and signed the police register as guarantor to get her brother released from detention. When she signed, the authorities advised her that her brother would have to return for inquiries when they called for him. The author made a guarantee to the authorities that her brother would not leave the country. The authorities told her that, if he did leave, they would arrest her, because K.T. was her responsibility as his guarantor. The author's brother fled Sri Lanka and was granted a protection visa in Australia in 2009.

had not disclosed that information earlier because she feared that it would reach the Sri Lanka Army. On 15 May 2015, the Refugee Review Tribunal confirmed the decision of the Department of Immigration and Border Protection, stating that there were several significant inconsistencies in the author's statements and that she could therefore not be considered to be a credible witness. The Tribunal also stated that the author might be subjected to questioning as a failed asylum-seeker or face a short period of detention prior to obtaining bail, and might be ultimately fined, but that such action would not constitute serious or significant harm.

2.5 On 18 June 2015, the author applied for judicial review to the Federal Circuit Court. At the hearing before the Court, the author appeared without counsel. She advanced the argument that she had felt inhibited when disclosing sensitive information to the Refugee Review Tribunal, including the details of her sexual assault by the Sri Lanka Army, owing to the fact that all of the Tribunal members had been male. She also argued that her brother K.T. had been recognized as a refugee in Australia² and that the Tribunal had not considered the risk of harm that she faced from the Eelam People's Democratic Party. On 28 November 2016, the Court dismissed the author's application. The Court asserted that there had been no procedural unfairness in the proceedings before the Tribunal since the author had not requested a female Tribunal member. Furthermore, the Court stated that the Tribunal was not bound by the findings in her brother's matter and that the Tribunal had clearly considered the risk of harm that she faced from the authorities and from paramilitary groups such as the Eelam People's Democratic Party.

2.6 On 12 December 2016, the author applied to the Federal Court of Australia for judicial review of the Federal Circuit Court's decision. The author claimed that the Federal Circuit Court had erred in rejecting her argument that the Refugee Review Tribunal had failed to consider the fact that her brother K.T. had been granted a protection visa in Australia and her fear of harm from paramilitary groups. The author argued that K.T.'s successful application for a protection visa in 2009 provided evidence that K.T. had been recruited by LTTE to collect food parcels, dig trenches and bunkers and participate in Martyrs Day celebrations and that he had been suspected of being a former fighter with LTTE. The author argued that K.T.'s protection claims corroborated the author's claims regarding her family's links to LTTE and her fear of harm from paramilitary groups, enhanced her credibility and demonstrated that she had the profile of a person with immediate family links to persons with the reputed profile of an LTTE fighter. In addition, the author argued that the Tribunal had failed to obtain the file on her brother's protection visa, which contained claims that could have corroborated the author's claims. This constituted a jurisdictional error, in that the Tribunal had unreasonably failed to exercise its discretion to seek information or constructively failed to carry out a proper review. The Federal Court of Australia dismissed the appeal on 13 April 2018. However, according to the author, the Federal Court made an explicit suggestion that, owing to the very unusual circumstances of the author's case and the fact that her claims had not been adequately put forward by her former migration representative,³ the author's circumstances should be taken into account by the relevant Minister in considering favourable exercise of his personal discretion.

2.7 The author made two requests for ministerial intervention based on the remarks of the Federal Court, arguing that the Court had suggested that the Minister should exercise his personal, non-compellable powers to intervene in the author's case. Those requests were rejected on 14 May and 3 October 2018.

2.8 On 20 May 2017, an arrest warrant was issued for the author to appear at a police station in Sri Lanka. In March 2019, a summons was issued for the author to appear in court on 14 March 2019 in Sri Lanka and, in September 2019, an arrest warrant was issued for

² According to K.T.'s successful application for a protection visa, he had been recruited by LTTE to collect food parcels, dig trenches and bunkers and participate in Martyrs Day celebrations, and he had been suspected of being a former fighter with LTTE.

³ The author claims that her former representative failed to bring her brother K.T.'s successful protection claims to the attention of the Refugee Review Tribunal, in circumstances in which those claims would have enhanced her credibility and corroborated her testimony.

failure to appear in court, owing to her having acted as a guarantor that her brother K.T. would not leave Sri Lanka.

2.9 On 7 October 2019, the author's brother T.T. was issued a protection visa after the submission of his case to the Administrative Appeals Tribunal. According to the author, in T.T.'s case, the Tribunal stated that the ethnicity and reputed links to LTTE of the author's older sister, V.T., would be discovered by authorities upon T.T.'s return to Sri Lanka and that their father's death would invite suspicions that T.T. was an LTTE sympathizer. The Tribunal noted that Tamils who resided in LTTE-controlled areas were subject to ongoing investigation, monitoring and surveillance, and stated that it was satisfied that V.T.'s background alone resulted in suspicions of LTTE links and that such suspicions held by the authorities were relevant to the Tribunal's findings that T.T.'s fears of persecution were well founded. The author made a third request for ministerial intervention based on the fact that her brother T.T. had been issued a protection visa on almost identical protection claims as those raised by the author. The author's third request for ministerial intervention was rejected on 6 December 2019.

Complaint

3.1 The author claims that her deportation to Sri Lanka would expose her to a high risk of torture or cruel, inhuman or degrading treatment or punishment, in breach of article 7 of the Covenant. The deportation would also put her at high risk of arbitrary arrest by the Sri Lanka Army and the deprivation of her right to liberty and security of person under article 9 (1) of the Covenant.

3.2 The author alleges that the evaluation of the facts and evidence conducted by the Refugee Review Tribunal was clearly arbitrary and amounted to a denial of justice. According to the author, the supporting documents pertaining to her brother K.T.'s successful application for protection provide evidence that he was recruited by LTTE and, further, taken into custody by the army and ill-treated for being a suspected former LTTE fighter. The author's first representative had failed to bring K.T.'s successful protection claim to the attention of the Tribunal. Had that claim been brought to the attention of the Tribunal, it would have corroborated the author's family links to LTTE and her claim to fear harm from paramilitary groups and would have enhanced her credibility. The Tribunal essentially rejected claims relating to the author's family as having no credibility and did not consider the risk that the author faced as an immediate family member of somebody with reputed membership in LTTE and who had been granted permanent protection in Australia as a result.

3.3 The author claims that the Federal Court inferred from her appeal that if the author's previous representative had presented her case before the Refugee Review Tribunal in the light of the information pertaining to her older brother K.T.'s successful application, the Tribunal's ultimate decision would have been affected. In addition, the author claims that the findings of the Tribunal in her younger brother T.T.'s case indicate that their older sister V.T.'s reputed links to LTTE positioned the author in the category of persons with immediate reputed family links to LTTE who deserve international protection.

3.4 The author claims that the findings in her younger brother T.T.'s successful application provide evidence that her own protection claims were not properly put before the Australian authorities, preventing the author from having a fair hearing. The fact that two of the author's brothers have been recognized by the State party as refugees on account of the LTTE links imputed to them substantiates her claims for protection. The author refers to the Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka, issued by the Office of the United Nations High Commissioner for Refugees, according to which the fact that she has an immediate family member with reputed LTTE links puts her at risk of persecution should she be deported.

3.5 The author alleges that she suffered a traumatic experience of torture and sexual assault by the Sri Lanka Army, which had a psychological impact on her and affected the refugee determination process. She argues that as a single Tamil woman returning to Sri Lanka with reputed immediate family links to LTTE, she also faces the risk of sexual and gender-based violence from the authorities, even in case of remote or suspected family links to LTTE. Her closest male relatives are her brothers in Australia, and she relies on them for

care and support. She also falls into the category of vulnerable women in Sri Lanka owing to her mother's location in Northern Province, her Tamil ethnicity, her weak economic position and her geographical displacement. Legal protection is rarely effective and State protection is not usually available to women.⁴

3.6 The author submits that it is likely that she will be subjected to arbitrary arrest and detention, in breach of article 9 (1) of the Covenant, if she is deported to Sri Lanka after having sought asylum in Australia. She refers to the fact that she left Sri Lanka illegally and that a warrant has been issued for her arrest owing to her having posted a surety as a guarantee that her brother would not leave Sri Lanka.

3.7 The author stresses that country information further strengthens her claims. It is apparent that the authorities in Sri Lanka continue to detain, interrogate and torture Tamil persons, particularly former members of LTTE or those with links to LTTE. In addition, the election of the new president in 2019 has sparked fear that a new period of repression may be under way.

State party's observations on admissibility and the merits

4.1 On 11 August 2020, the State party provided its observations on admissibility and the merits of the author's communication.

4.2 The State party contends that the author has failed to sufficiently substantiate her claims under article 7 of the Covenant. It maintains that robust domestic processes have considered the author's claims and determined that they are not credible and do not engage the State party's non-refoulement obligations. The State party notes that, with the exception of the additional country information with respect to the election of the new president, the author has not provided any relevant new evidence in her submission to the Committee.

4.3 The State party notes that the Department of Immigration and Border Protection, prior to its decision of 14 August 2013, conducted an interview with the author with the assistance of an interpreter. The Department identified several discrepancies in the author's application for a protection visa. For example, the author claimed that the Sri Lanka Army had interrogated her family about their suspected LTTE links, but when asked, during her protection visa interview, if she had ever been personally accused of being an LTTE supporter or member, she answered negatively. The decision maker found it implausible that the author had never discussed her treatment by the Sri Lanka Army with other members of her family and that she had waited until December 2006 to flee Sri Lanka despite having been treated in the manner claimed since July 2006. Furthermore, the decision maker found implausible the author's claim that the Sri Lanka Army had maintained control over her mother in Sri Lanka, since her mother had been able to spend three months in India and had thereafter returned to Sri Lanka. The decision maker noted that the death of the author's father had occurred seven years earlier and that the author's mother had resided in the same area as the author prior to the author's departure from Sri Lanka in 2006. The decision maker also stated that, while the author could be charged with an offence under Sri Lankan law for leaving the country illegally, the author would not be at real risk of significant harm, since the likely punishment for persons with her profile was a fine.

4.4 The State party notes that the author was physically present at the hearing before the Refugee Review Tribunal and had an interpreter. On 15 May 2015, the Tribunal confirmed the decision of the Department of Immigration and Border Protection. The Tribunal found that there were inconsistencies in the author's statements with respect to the alleged involvement of her family members with LTTE and to events in Sri Lanka before she left the country. Therefore, the Tribunal did not accept that the author had been targeted or harmed by the Sri Lankan authorities, or that she would face a real risk of persecution on account of being a female Tamil or for her actual or presumed political opinions. The Tribunal also considered that, according to the country information, the author might face short-term detention and a fine upon her return to Sri Lanka given that she had departed the country illegally. However, given the short-term nature of such detention, the fact that it would be the result of a generally applicable law as part of standardized re-entry procedures applicable

⁴ See CEDAW/C/LKA/CO/8.

to all returnees to Sri Lanka, regardless of whether they were returning voluntarily or involuntarily, and the fact that the country information indicated that the risk of torture or mistreatment was low for the great majority of returnees, the risk that the author would be subjected to significant harm was remote.

4.5 As regards the proceedings before the Federal Circuit Court, the State party notes that the author was again physically present at the hearing and made submissions with the assistance of an interpreter. The author appeared at the hearing without the benefit of legal counsel and advised the court that she was ready to proceed. The Federal Circuit Court noted in its decision the statement of the Refugee Review Tribunal that it had not given any adverse weight to the author's failure to previously mention her claims of sexual assault but that it had found that other issues with the author's credibility outweighed those raised by her alleged sexual assault. The Court also stated that the author had not provided evidence of her brother K.T.'s refugee status to the Tribunal and that, even if she had, her brother's case would not be binding on the author's case.

4.6 The State party notes that the Federal Court considered in its decision that, despite having been represented by a migration lawyer and an agent, the author had never made a clear claim that her brother K.T. had had a connection to LTTE or that his claims or the evidence that she had provided in support of her protection visa application were relevant, let alone critical, to her claims. The Court was also not satisfied that any such claim arose from the evidence and material before the Refugee Review Tribunal. The Court considered that the Tribunal had, in its decision, made reference to paramilitary groups and not merely to the Eelam People's Democratic Party, as claimed by the author. The Court stated that the Tribunal had also considered the author's claims regarding alleged physical and sexual mistreatment during interrogation, noting that the Tribunal did not accept those claims owing to significant credibility concerns in relation to the author's statements and evidence.

4.7 The State party submits that ministerial intervention is a non-compellable power, under which the Minister can intervene in individual cases if the Minister thinks that it is in the public interest to do so. The author made three requests for ministerial intervention, all of which were rejected.

4.8 As to the author's claims under article 9 (1) of the Covenant, the State party considers that it does not have non-refoulement obligations in relation to article 9. It submits that the author's claim under article 9 (1) should therefore be found inadmissible *ratione materiae*. Furthermore, even if there were such obligations, the author has not provided sufficient evidence to substantiate a claim that she would be subjected to arbitrary detention upon her return to Sri Lanka.

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

5.1 On 15 February 2021, the author submitted her comments on the State party's observations on admissibility and the merits of her communication. The author reports that she is now married, but that her husband would not return to Sri Lanka with her, which means that she would be returning as a single Tamil woman with immediate presumed family links to LTTE. Owing to this profile, she faces the risk of sexual and gender-based violence. The fact that a warrants have been issued for her arrest and that three of her siblings have been offered protection in Western countries cumulatively raise her profile.

5.2 The author argues that the State party has neglected to consider the new pieces of evidence introduced by the author: (a) a copy of a warrant issued for the author's arrest, dated 20 December 2017; (b) a message from the Sri Lankan police, dated 5 January 2018; (c) a copy of a summons addressed to the author, dated 4 March 2019; and (d) a copy of a warrant issued for the author's arrest, dated 14 September 2019, for failure to appear in court.

5.3 The author states that these new pieces of evidence heighten her profile and increase the likelihood of her coming to the attention of Sri Lankan authorities. The new evidence, combined with the finding of the State party in her brothers' cases that they have reputed LTTE membership, establishes that there is a real, personal and foreseeable risk to the author should she return to Sri Lanka. This evidence was not previously considered as part of the domestic proceedings as it became available only after they had concluded. In addition, the

fact that the author's older brother, K.T., had already been granted a permanent protection visa in 2009 was not considered by the Refugee Review Tribunal.

5.4 The author considers that, since the Administrative Appeals Tribunal accepted that her younger brother T.T. would attract attention from the authorities based on his family's presumed LTTE links, it is apparent that the author herself would attract even greater attention owing to an outstanding warrant for her arrest and because she is a single Tamil woman returning to Sri Lanka and a survivor of sexual assault.

5.5 The author refers to country information and states that the State party's response to the coronavirus disease (COVID-19) pandemic has also prompted concerns that the Administration is utilizing the crisis to suppress its critics. The author claims that it is evident that the current Administration of Sri Lanka has increased the intimidation and surveillance of minority Muslim and Tamil communities, targeting those perceived to be critical of the Government, and that attacks on the rule of law and judicial independence have increased. The author claims that the country information is directly relevant to her matter since her protection claims have not been considered with respect to the current Administration of the country.

5.6 The author submits that the immediate links of her family to LTTE will be imputed to her upon her arrival in Sri Lanka for the same reasons as identified by the Administrative Appeals Tribunal in her younger brother T.T.'s case: (a) their family has made complaints regarding disputed land and the author's mother has made complaints against local authorities to the Human Rights Commission of Sri Lanka; (b) the author left Sri Lanka for India illegally; (c) a number of her immediate family members are living in Western countries; (d) her sister and brother-in-law, who live in Sri Lanka, are required to report regularly to the authorities as part of the ongoing monitoring of Tamils in the Vanni region; (e) the timing and place of her father's death will invite strong suspicions about her pro-LTTE sympathies and offshore activities, in the context of the other factors; and (f) the fact that she has resided outside of Sri Lanka since 2007 means that it is likely that the authorities will press her for information about offshore activities in favour of LTTE and Tamil separatism.

5.7 The author refers to her own statement, dated 15 February 2021, and to a statutory declaration by her brother T.T., dated 11 January 2019. In her statement, the author recalls that she acted as a guarantor that her brother K.T. would not leave Sri Lanka and that the authorities told her that they would arrest her if her brother left the country as she was his guarantor and he was her responsibility, whereupon the author and her brothers decided they could not stay in Sri Lanka because they were not safe. She claims that this was why they fled the country.

5.8 The author states that after she and her four siblings left Sri Lanka, the police started coming to their mother's house to look for them. Her mother was moving between India and Sri Lanka to evade detection. In 2017, the police came to their mother's house to look for them. Her mother decided to rent out the house and moved to another address. In 2018, the police delivered a warrant for the author's arrest to the tenants living in her mother's old house and continued to deliver warrants until her mother told the tenants to stop accepting them and to inform the police that the whole family had moved to India. The author also submits that her sister has moved to Periyathampanai with her husband and that the authorities continue to check on them by visiting their house and have told them not to leave the country.

5.9 The author reports that she has not previously spoken about her mother's land dispute, since there have been so many issues that affected her in Sri Lanka that she did not know which ones to raise. A large proportion of her mother's land was taken by force by the People's Liberation Organization of Tamil Eelam, and part of the land was allotted to her mother. The author claims that if she returns to Sri Lanka, the People's Liberation Organization of Tamil Eelam will think that she will try to reclaim the land. She fears that she will be captured and detained in a camp and interrogated about her father and his involvement with LTTE again, because the family has had troubles with the authorities in the past when they have tried to get their land back.

5.10 The author submits that on two occasions her mother has been questioned at the airport when returning from India to Sri Lanka, and on one occasion, two days after her return, men

in civil uniforms with the symbol of a knife on their shirts came to her home and took her passport away. The author does not know who they were but suspects that they might have been a higher authority in the army. Her mother made a complaint to the police station and had to apply for a new passport.

State party's additional observations

6.1 On 28 July 2021, the State party provided additional observations. It submits that, having carefully assessed the information provided by the author, it has determined that there are no substantial grounds for believing that the author faces a real risk of irreparable harm if returned to Sri Lanka.

6.2 The State party submits that it carried out a further assessment of the author's claims following receipt of the author's communication to the Committee, in accordance with its policy on requests for interim measures. The State party reiterates its arguments regarding the inadmissibility of the author's claims under articles 7 and 9 (1) of the Covenant. It also provides a detailed description of the asylum proceedings before the domestic authorities.

6.3 With respect to the alleged arrest warrant and the author's submissions regarding her younger brother T.T.'s protection visa, the State party notes that the author referred to a warrant and the decision to grant T.T. a protection visa in her request for ministerial intervention under section 417 of the Migration Act on 2 December 2019. The request was assessed as inappropriate to consider under section 417, as it reiterated the author's non-refoulement claims and such claims should be made in a request for ministerial intervention under section 48B of the Migration Act.

6.4 Furthermore, the State party points out that the author has not provided the original summons or warrants, and therefore the authenticity of the documentation cannot be verified. The State party considers it unlikely that the Sri Lankan authorities would have issued arrest warrants and a summons in the period 2017–2019, given the significant lapse in time since the author's departure from Sri Lanka. In addition, country information indicates that fraudulent documentation is widespread in Sri Lanka and easy to procure. Therefore, and since the onus is on the author to provide all relevant evidence to the Committee, the State party considers that the arrest warrants, the message from the Sri Lankan police and the summons do not appear to be genuine.

6.5 The State party reiterates its initial arguments in respect of the author's claims regarding her older brother K.T.'s refugee status.

6.6 The State party considers that even though the author's brothers have been granted protection visas, the author has provided inconsistent evidence with regard to her family's actual or imputed links to LTTE.

6.7 The State party notes that the additional country information referred to by the author is not specific to the author's own circumstances and does not establish that she is personally at risk of torture.

Additional comments from the author

7.1 In her additional comments, of 25 August 2021, the author insists that, if deported to Sri Lanka, she would face threats of serious harm on account of her gender, past sexual assault and reputed family links to LTTE.

7.2 The author argues that the State party has merely restated previous findings within the domestic proceedings. She observes that the State party refers to a new assessment that it conducted. However, it does not specify when that assessment was completed and by which decision-making body. The author notes that an international treaty obligations assessment has not been conducted in the author's matter, as is ordinarily the case when an applicant raising protection claims faces the prospect of removal from Australia following changes in policy, legislation or circumstances.⁵

⁵ The author submits that an international treaty obligations assessment, a non-statutory assessment of the circumstances of a person and the situation in their country of origin, is required to determine

7.3 The author submits that the State party's finding that the arrest warrants and summons provided by the author are fraudulent is not supported by any reasoning or analysis. The State party does not elaborate or explain the relevance of the country information regarding the prevalence of fraudulent documentation in Sri Lanka to the author's claims. Furthermore, the State party has not indicated what steps have been taken to verify the authenticity of the documents.

7.4 The author recalls that the new pieces of evidence, in combination with the findings of the State party in her brother T.T.'s case, have not previously been considered as part of the domestic process, as they arose after the merits review process had concluded. These findings would have ameliorated the credibility concerns regarding the author.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2 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.

8.3 The Committee notes the author's statement that she has exhausted all effective domestic remedies available to her. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

8.4 The Committee notes the author's statement, that by forcibly returning her to Sri Lanka, the State party would violate her rights under articles 7 and 9 (1) of the Covenant because, as a single female Tamil returnee with presumed family links to LTTE and as a survivor of sexual assault by the Sri Lanka Army, she would be at risk of torture, detention and persecution. It also notes the State party's challenge to admissibility for lack of sufficient substantiation of the author's claims.

8.5 The Committee recalls that, in paragraph 12 of its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, it referred to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory, where there were substantial grounds for believing that there was 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 and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists. All relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin. The Committee further recalls that it is generally for the organs of State parties to examine the facts and evidence of the case in question in order to determine whether such a risk exists, unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.

8.6 In the present case, the Committee notes, on the one hand, the author's allegation that the State party's decisions were arbitrary and amounted to a denial of justice as they failed to take into account the warrants issued for her arrest and the successful claims of her brothers when assessing her credibility, which would have corroborated her claims and enhanced her credibility.

8.7 On the other hand, the Committee notes the State party's argument that the author's claims have been thoroughly considered by robust domestic processes and that the domestic authorities and courts have established that the author's claims are not credible owing to several important inconsistencies in her statements, with respect to the alleged involvement of her family members with LTTE and to events in Sri Lanka before she left the country. In

whether the non-refoulement obligations of Australia are engaged as a result of changes in policy, legislation or a person's circumstances.

particular, the State party argues that the author did not claim that her brother K.T. had a connection to LTTE or that her brothers' claims or evidence in support of their visa applications were relevant to her claims, nor did any such claim arise on the basis of the evidence and material before the Refugee Review Tribunal. As to the country information, the State party argues that the additional country information referred to by the author is not specific to the author's own circumstances and does not establish that she is personally at risk of torture.

8.8 The Committee notes from the documents submitted by the author that the domestic authorities considered her statements not to be credible on the basis of inconsistencies in her accounts regarding the involvement of her family members in LTTE, her own involvement in LTTE, her escape from her house in Sri Lanka and the situation of her mother in Sri Lanka after the author left. Furthermore, the author's account of being detained and questioned by the Sri Lanka Army was considered by the Department of Immigration and Border Protection to be extremely brief and lacking in detail and, given the significant credibility concerns, the author's claim regarding sexual or physical mistreatment was considered not to be credible by the Refugee Review Tribunal. Despite the author's argument that her former representative had failed to bring her brother K.T.'s successful protection claims to the attention of the domestic authorities, the Committee considers that the author had several opportunities to raise her claims before those authorities, with the assistance of not only her legal representative but also an interpreter, during an interview regarding her protection visa application and an oral hearing before the Refugee Review Tribunal.

8.9 With regard to the author's allegation that a warrant has been issued for her arrest, the Committee notes that it does not appear from the documents in the file that she raised the fact that she was her brother's guarantor or that she was therefore at risk of being arrested before the domestic authorities during the ordinary proceedings stage.

8.10 The Committee considers that the information at its disposal demonstrates that the State party's authorities took into account all the elements available, including the human rights situation in Sri Lanka and the statements and evidence provided by the author in support of her allegations, when evaluating the risk that she might face and nevertheless, owing to the marked inconsistencies of her statements, found that the author had not shown that it was probable that, in case of return, she would face a risk of persecution that justified asylum. The Committee finds that, while the author disagrees with the conclusions of the State party's authorities regarding the assessment of the facts and the credibility of her claims, the facts before the Committee do not allow it to conclude that the assessment of the State party's authorities was clearly arbitrary or amounted to a manifest error or a denial of justice. Accordingly, the Committee concludes that the author has failed to substantiate, for the purposes of admissibility, that she would face a personal and real risk of treatment contrary to article 7 of the Covenant if returned to Sri Lanka.

8.11 The Committee notes the author's claim that, if she is removed to Sri Lanka, she will be at a high risk of arbitrary detention, in breach of the State party's obligations under article 9 (1) of the Covenant. The Committee considers that the author has not clearly articulated how her removal to Sri Lanka would violate the State party's non-refoulement obligations under that article. The Committee therefore finds that the author has failed to substantiate, for the purposes of admissibility, her allegations under article 9 (1) of the Covenant and declares that part of the communication inadmissible under article 2 of the Optional Protocol.

8.12 The Committee concludes that the author has failed to substantiate, for the purposes of admissibility, her claims under articles 7 and 9 (1) of the Covenant.

9. The Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That the present decision shall be communicated to the State party and to the author.