



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

CCPR/C/95/D/1432/2005
23 April 2009

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Ninety-fifth session
16 March – 3 April 2009

VIEWS

Communication No. 1432/2005

<u>Submitted by:</u>	Mr. Dalkadura Arachchige Nimal Silva Gunaratna (represented by the Asian Legal Resource Centre)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Sri Lanka
<u>Date of communication:</u>	1 August 2005 (initial communication)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 2 November 2005 (not issued in document form)
<u>Date of adoption of Views:</u>	17 March 2009

* Made public by decision of the Human Rights Committee.

Subject matter: Ill-treatment of author by police officers while in detention

Procedural issue: Effectiveness of remedies

Substantive issues: prohibition of torture and cruel, inhuman and degrading treatment; right to security of the person; right to an effective remedy; equality of arms.

Articles of the Covenant: 7; 9; 14, paragraph 1; 2, paragraph 3.

Article of the Optional Protocol: 5, paragraph 2.

On 17 March 2009, the Human Rights Committee adopted the annexed text as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1432/2005.

[ANNEX]

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

Ninety-fifth session

concerning

Communication No. 1432/2005**

Submitted by: Mr. Dalkadura Arachchige Nimal Silva Gunaratna (represented by the Asian Legal Resource Centre)

Alleged victim: The author

State party: Sri Lanka

Date of communication: 1 August 2005 (initial communication)

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

Meeting on 17 March 2009,

Having concluded its consideration of communication No. 1432/2005, submitted to the Human Rights Committee on behalf of Mr. Dalkadura Arachchige Nimal Silva Gunaratna 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, dated 1 August 2005, is Mr. Dalkadura Arachchige Nimal Silva Gunaratna, a Sri Lankan national born on 15 January 1961. He claims to be a victim of violations by Sri Lanka of articles 7; 9; 14, paragraph 1; and article 2, paragraph 3,

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Lazhari Bouzid, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Ruth Wedgwood.

of the Covenant. He is represented by counsel, the Asian Legal Resource Centre. The Covenant and the Optional Protocol entered into force for the State party on 11 September 1980 and 3 January 1998, respectively.

1.2 On 2 November 2005, and in light of the information before it, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures requested the State party, under Rule 92 of its rules of procedure, to afford the author and his family protection against further intimidations and threats. The State party was also requested to provide the Committee, at its earliest convenience, with its comments on the author's allegations that he and his family have been denied such protection.

The facts as presented by the author

2.1 On 19 June 2000, the author and his wife were at their home. At approximately 4:30pm, ten police officers led by the Assistant Superintendent of the Panadura police surrounded the author's house, illegally arrested him, tied his hands behind his back with rope, and took him into custody to Panadura police station. After his arrest, the author was allegedly brutally tortured by the police officers at the police station.

2.2 On 5 July 2000, the author was taken to Panadura hospital by two Panadura police officers. Hospital authorities recommended that the author be admitted but the officers refused to do so. The author was taken to Panadura hospital a second time, where hospital authorities advised that he be taken to Colombo Eye Hospital. On 10 July 2000, the author was admitted to Colombo Eye Hospital. He remained there for one month and seven days and underwent eye surgery. After he was discharged, the author was taken to Panadura police station where he was further assaulted, handcuffed and tied to a bed.

2.3 The author suffered serious physical and psychological injuries, and permanently lost the sight of one of his eyes, as a result of the torture¹. The author refers to the detailed medical report of 10 November 2000 in this regard², which details the history of the injuries suffered by the author, and lists the twenty injuries found on his body during the examination. The report concludes that one injury and one scar are the result of blunt trauma such as a blow with a hard blunt object. Further, the medical report concludes that these two injuries are of a

¹ The author provides a medical report from the Judicial Medical Officer of Colombo dated 10 November 2000, relating to his fundamental rights application to the Supreme Court, which states that some injuries are "due to blunt trauma like a blow with a hard blunt object", that some scars "are consistent with scars of healed contusions/contused abrasions and could have been caused by long blunt objects like batons rubber hoses etc"; and that other scars "could have been caused by the application of ligatures/handcuffs" at the wrist and the ankle. All scars were less than six months old and "are consistent with the manner of assault during the period as mentioned by the examinee".

² The medical report states that while in custody the author was handcuffed and assaulted with hosepipes; laid face down on an iron bed, handcuffed and tied by the ankles to the bed, and assaulted with a club and a hose pipe; kept in a dark room for eight days; that during one assault he received an injury to his right eye and bled from his eye; that he was suspended from the roof and beaten, and thereafter fainted; that his head was immersed under water.

nature which fall within section 3(11)(e) of the Penal Code, due to the permanent impairment of the author's vision and secondary glaucoma. The author adds that the loss of the sight in one eye will have a severe impact on the quality of his life. As a result of his unlawful arrest and assault, the author cannot pursue his livelihood and is unable to support his wife and three children.

2.4 The author states that after he was tortured, he endured multiple threats to his life, warning him to withdraw the complaints he had lodged. On 6 March 2005, shots were fired at his house by police officers. When the author came out of the house, he witnessed three police officers in uniform and two other persons in plain clothes running into a vehicle. The author notified higher police officials but no action was taken. The author and his family have received several threatening phone calls from unknown persons since he reported the incident, and he has been pressured to settle the case. In spite of making several complaints to the relevant authorities about these threats to his life, no action was taken to protect the author, and the perpetrators continue in their positions and are free to continue threatening the author. One of the perpetrators is an Assistant Superintendent of Police, Mr. Ranmal Kodithuwakku, who is a high ranking police officer. The author notes that he is the son of the former Inspector General of Police, and he believes that the high social status and influence of this particular police officer is one of the reasons for the delay in obtaining justice in this case. The Asian Human Rights Commission³ and the UN Special Rapporteur on Torture have issued urgent appeals⁴ calling for immediate intervention in the case.

2.5 The author made a detailed statement to the Sri Lankan Human Rights Commission on 27 July 2000, while he was at Colombo Eye Hospital. He then submitted a fundamental rights case to the Supreme Court of Sri Lanka on 18 September 2000 (case number 565/2000)⁵. Once the complaint was filed, its hearing was postponed several times. The author was pressured by the perpetrators to settle the case but refused to do so. Complaints about these threats were made to higher police authorities but no action was taken. At the time of the original communication, this case had not yet been decided, despite the fact that its final hearing had already taken place, and no steps by the domestic mechanisms available in Sri Lanka were successful in bringing the perpetrators to justice⁶.

³ Urgent appeals issued by the Asian Human Rights Commission dated 11 March and 8 April 2005, suggesting action be taken to urge the Sri Lankan authorities to provide immediate protection to the author and his family, and conduct a proper investigation.

⁴ See the UN Special Rapporteur's summary of information, including individual cases, transmitted to governments and replies received, E/CN.4/2004/56/Add.1, paragraph 1558 E/CN.4/2003/68/Add.1, paragraphs 1523-1524 [which refers to the author's arrest on a separate occasion, on 22 May 2000, when he was kept in custody for one week and beaten]; and 1573-1574.

⁵ Based on articles 11 [freedom from torture], 12(1) [right to equality before the law], 13(1) and 13(2) [freedom from arbitrary arrest, detention and punishment] and 14(1)(g) [freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise] of the Constitution..

⁶ The author refers to Communication No. 1250/2004, *Sundara Arachchige Lalith Rajapakse v. Sri Lanka*, Views adopted on 14 July 2006, where the Committee observed that a delay of

2.6 The author emphasises that even though an investigation into his case was ordered and completed, none of the perpetrators have been indicted, and no action has been taken by the authorities under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994, nor have the authorities initiated any proceedings against the perpetrators. The author emphasises that he has not yet been provided with any protection, nor has his case been decided.

3.1 On 14 December 2006, counsel informed the Committee that the Supreme Court judgment on the author's fundamental rights case was handed down on 16 November 2006, six years after the application was filed. The author maintains that the delay of six years amounts to an unreasonably prolonged delay within the meaning of article 5, paragraph 2(b) of the Optional Protocol. The written submissions to the Supreme Court by the author were made on 14 October and 2 November 2004, and usually the delivery of the judgment takes place within a short time thereafter, and in fundamental rights cases usually within one or two months. In the meantime the author was encouraged and pressed by the court and the main respondent to settle the case.

3.2 The judgment of the Supreme Court found that several police officers had violated the author's rights as guaranteed by the Constitution, regarding illegal arrest (section 13(1)), illegal detention (section 13(2)) and torture (section 13(5)). Thus, on the merits of his case, the author argues that his position was vindicated by the Supreme Court and that the State party cannot contest the merits⁷.

The complaint

4.1 The author alleges a violation of article 7 of the Covenant, since he was tortured from 19 June 2000 for 21 days. As a result, he permanently lost vision in one eye and was hospitalised for one month and seven days. He was rendered unable to support his family and continues to remain unable due to the injuries sustained by him. He lives under fear and intimidation from his assailants, and domestic mechanisms have failed to provide him redress.

4.2 The author claims a violation of article 9 of the Covenant, since he was illegally arrested and detained in custody without being informed of the reason for his arrest. He was not brought before a local magistrate, even though the Criminal Procedure Code provides that an

three years by the State party to expedite the proceedings as against the perpetrators amount to an unreasonably prolonged delay within the meaning of article 5, paragraph 2(b) of the Optional Protocol. The author also refers to Communication No. 617/1995, *Anthony Finn v. Jamaica*, Views adopted on 31 July 1998.

⁷ The judgment concludes that the author was arrested on 19 June 2000; and that the detention of the author from 19 June 2000 until 8 July 2000, the date on which the detention order was obtained, was unlawful and therefore in breach of article 13, paragraphs 1 and 2, of the Constitution. The Supreme Court also deemed that the medical evidence was "conclusive evidence of the injuries suffered by the complainant", that the author "had been subjected to torture whilst in police custody" and hence there had been a violation of article 11 of the Constitution. The Supreme Court deemed that the infringement of the rights guaranteed under article 14(1)(g) of the Constitution could not be sustained.

arrested person must be produced before a court of law within twenty-four hours of arrest. He was deprived of his right to apply for bail; detained for 21 days; and tortured by police officers throughout this period. He is under continuous threat from the assailants, who have evaded any punishment. No domestic procedures can provide the author protection, even though he has made numerous requests to higher police authorities and human rights bodies for protection. By failing to take adequate measures to ensure that the author was protected from threats by those who tortured him or other persons acting on their behalf, the State party breached article 9 of the Covenant.

4.3 The author further alleges a violation of article 2, paragraph 3, of the Covenant. He recalls that despite initiation of a fundamental rights action in the Supreme Court, and making of numerous complaints to the relevant police and human rights authorities regarding the threats to his life, none of the domestic bodies have provided an effective remedy to the author. The case was brought before the Supreme Court on 18 September 2000 and was heard, but no judgment had been rendered when the original communication was submitted to the Committee. The author submits that it cannot be argued that the investigation remains pending, as it was completed. He recalls the Committee's jurisprudence that a State party is under an obligation to provide an effective and enforceable remedy for violations of the Covenant⁸; that lack of remedies is in itself a violation of the Covenant⁹; that the State is under an obligation to provide a remedy for the offence of torture¹⁰; and that complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective, and that the notion of an effective remedy must include as full a rehabilitation as may be possible. In this case, the State party failed to comply with its obligation under article 2, paragraph 3, of the Covenant.

4.4 The author adds that the judgment of the Supreme Court cannot be considered an adequate remedy pursuant to article 2, paragraph 3, of the Covenant, as it exonerated the chief perpetrator of the violations. The sole ground for this decision are notes produced by the Assistant Superintendent that on the day of the arrest he was engaged in other duties, which is in complete contradiction with available evidence. The result of this judgment is that the responsibility for the violations was put on minor officers, exonerating the chief perpetrator who was the commanding officer of the arrest, detention and torture operation. The Assistant Superintendent is also the Officer-in-Charge of the Quick Response Unit, which according to the Supreme Court judgment carried out the arrest, detention and torture, and he should have been held liable because of his command responsibility. As such, the author argues that the principle of equality before the law and before courts has not been applied, as the Assistant

⁸ The author refers to Communications No. 238/1987, *Floresmilo Bolaños v. Ecuador*, Views adopted on 26 July 1989; No. 336/1988, *Fillastre v. Bolivia*, Views adopted on 5 November 1991; No. 90/1981, *Luyeye Magana ex-Philibert v. Zaire*, Views adopted on 21 July 1983; No. 563/1993, *Bautista de Arellana v. Colombia*, Views adopted on 27 October 1995; No. 840/1998, *Mansaraj et al v. Sierra Leone*, Views adopted on 16 July 2001; and No. 768/1997, *Mukunto v. Zambia*, Views adopted on 23 July 1999.

⁹ Communication No. 90/1981, *Luyeye Magana ex-Philibert v. Zaire*, Views adopted on 21 July 1983 paragraph 8.

¹⁰ General Comment No. 20 on article 7, paragraph 14; Communication No. 322/1988, *Hugo Rodríguez v. Uruguay*, Views adopted on 19 July 1994, paragraph 12.3.

Superintendent was treated as being above the law, and that this in itself constitutes a violation of article 14, paragraph 1, of the Covenant. He also argues that article 14, paragraph 1, read together with article 2, paragraph 3, was breached as he was denied an adequate remedy.

4.5 The author was also denied an adequate remedy in light of the inadequate compensation awarded in this case by the Supreme Court. The Supreme Court awarded Rs. 5,000 (approximately USD 50) to be paid by the fourth respondent for the eye injury, and requested the Inspector General of Police to pay Rs. 50,000 (approximately USD 500) by way of compensation. The author argues that the Supreme Court failed to give due weight to the extent of the injuries sustained by him and the length of his illegal detention. He recalls that in other cases, the Supreme Court has awarded higher compensation for serious injuries¹¹. Thus, while the compensation awarded does not amount to an adequate remedy for violations of rights protected under articles 7 and 9 of the Covenant, the award also violates the principle of equality before courts and tribunals under article 14, paragraph 1, of the Covenant.

4.6 The author further claims that his right to an adequate remedy for violations of articles 7 and 9 of the Covenant have been breached, as no one has been prosecuted, despite the fact that the medical report indicated that one injury amounted to an offence under section 3(11)(b) of the Penal Code. He refers to letters written on his behalf by the Asian Human Rights Commission to the Attorney-General of Sri Lanka and the Inspector General of Police, drawing to their attention the failure to take criminal and disciplinary actions against the persons responsible for the violations. The State party has therefore failed to provide adequate remedy to the author. As other similar crimes have been prosecuted before Sri Lankan courts, some of which occurred after 2000, there have been violations of articles 7 and 9, read with article 2, paragraph 3, and of article 14, paragraph 1, read with article 2, paragraph 3.

4.7 The author states that his complaint has not been submitted to another procedure of international investigation or settlement.

4.8 On exhaustion of domestic remedies, the author recalls that he has attempted to obtain redress through a fundamental rights application, in order to obtain compensation and redress. He has not obtained any result after five years and has been subjected to threats and other acts of intimidation because he has initiated these procedures. He therefore considers that the proceedings in Sri Lanka are unreasonably prolonged and the remedies are not effective. Further, regarding the effectiveness of the remedies, the author submits that at the time of his original communication to the Committee, no judgment had been delivered regarding his allegations of torture, although the case had been heard by the Supreme Court. The alleged perpetrators were neither suspended from their duties¹² nor taken into custody, which allowed

¹¹ In a case where the torture victim suffered renal failure (Gerard Mervyn Perera, SCFR 328/2002), the Supreme Court awarded Rs. 800,000 (approximately USD 8,000) as compensation, and the same sum again for medical costs. The total award was Rs. 1,600,000 (approximately USD 16,000).

¹² The author refers to the recommendations of the UN Special rapporteur on torture that “When a detainee or relative or lawyer lodges a torture complaint, an inquiry should always take place and, unless the allegation is manifestly ill-founded, the public officials involved

them to put pressure upon and threaten the complainant. The author refers to the jurisprudence of the Committee Against Torture that allegations of torture should be investigated promptly, without much delay¹³; that no formal complaint need be lodged; and that it is sufficient that the victims bring the facts to the attention of the authorities.

State party's observations

5. On 16 March 2007, the State party informed the Committee that subsequent to the Supreme Court judgment, the Attorney-General has decided to indict all the police officers against whom the Supreme Court issued adverse findings. Indictments under the Convention Against Torture Act are currently being prepared and will be dispatched to the relevant High Courts in due course.

Author's comments on the State party's submissions

6.1 On 20 July 2007, the author questions how the developments mentioned by the State party are meant to affect the admissibility and the merits of the communication. He recalls that the judgment of the Supreme Court was issued more than six years after the case was filed, which in itself constitutes a violation of the obligation to provide a remedy without undue delay. Further, criminal proceedings are still pending, more than seven years after the acts of torture occurred. Thus, the obligation to carry out a prompt and impartial investigation has not been met and remedies are "unreasonably prolonged" within the meaning of article 5, paragraph 2(b), of the Optional Protocol¹⁴.

6.2 The author notes that the State party does not address the facts and the substance of his claims. It does not provide any explanation for the substantial delays of over six years in both fundamental rights and criminal proceedings relating to the present case. Referring to the Committee's jurisprudence¹⁵, the author requests that the Committee give due weight to the

should be suspended from their duties pending the outcome of the investigation and any subsequent legal or disciplinary proceedings." (E/CN.4/2003/68, paragraph 26 (k)).

¹³ The author refers to Communication No. 59/1996, *Encarnación Blanco Abad v. Spain*, Views adopted on 14 May 1998, paragraphs 8.2 and 8.6; Communication No. 60/1996, *Khaled M'Barek v. Tunisia*, Views adopted on 10 November 1999, paragraphs 11.5-11.7, where the Committee Against Torture deemed that a delay of three weeks and more than two months in initiating procedures into allegations of torture was excessive, as was an unwarranted delay of ten months in ordering an inquiry into allegations of torture.

¹⁴ See Communication No. 1250/2004, *Rajapakse v. Sri Lanka*, Views adopted on 14 July 2006.

¹⁵ Communications No. 1152/2003, *Ndong Bee v. Equatorial Guinea*, and 1190/2003, *Mico Abogo v. Equatorial Guinea*, Views adopted on 31 October 2005; No. 641/1995, *Gedumbe v. Democratic Republic of the Congo*, Views adopted on 9 July 2002; No. 532/1993, *Maurice Thomas v. Jamaica*, Views adopted on 3 November 1997; No. 1108/2002, *Karimov v. Tajikistan*, Views adopted on 26 March 2007; No. 1071/2002, *Valeryi Segeevich Agabekov v. Uzbekistan*, Views adopted on 16 March 2007; No. 1353/2005, *Njaru v. Cameroon*, Views adopted on 19 March 2007; and No. 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006.

allegations substantiated in the initial complaint in the absence of comments by the State party.

6.3 Regarding the State party's decision to indict the police officers named in the Supreme Court judgment, the author notes that the State party has not provided a time table for the indictments, or provided any information on arrests. Furthermore, the State party has not provided any indication as to whether the said police officers have been or will be the subject of any administrative sanctions, and whether they remain in post. The mere mention that the Attorney-General has decided to indict, without any clarifying details of the official investigation, provides little assurance as to the seriousness of the investigation and the likelihood that it will result in indictments capable of being fully prosecuted under the law. Further, the Attorney-General's decision fails to take into consideration the fact that the most responsible person (the Assistant Superintendent) is not affected by the Supreme Court judgment, and therefore even if indictments were to follow, they would relate to the 'foot soldiers' as opposed to the person chiefly responsible, who remains shielded from responsibility.

6.4 As to the allegation of violation of article 7 of the Covenant, read with article 2, paragraph 3, the author recalls that no action has been taken against the chief perpetrator regarding the violations of his rights, and therefore submits that the Supreme Court judgment has no basis in law or fact and itself constitutes a denial of his right to an adequate remedy for violation of his rights.

6.5 As to the compensation granted by the Supreme Court, the author argues that the compensation was grossly inadequate, compared to sums awarded in other cases, and in light of the injuries suffered by the author it cannot constitute an adequate remedy in terms of article 2, paragraph 3, of the Covenant. The author further notes that the Supreme Court did not order any compensation to be paid by the State: only two respondents were ordered to pay compensation. This failure ignores the State's responsibility for violation of rights by State officers. It is for the State to ensure that its officers do not commit torture, illegal arrest and detention and other acts of abuse of rights. The State party, having failed in their duty to protect the rights of the author, is responsible for payment of compensation to him.

6.6 As to the effectiveness of remedies, the author recalls the delays in the fundamental rights case, and argues that it is not apparent that the case, which was supported by affidavits and strong medical evidence, was of such a complex nature that more than six years were required for its determination. In light of the Committee's jurisprudence¹⁶, and considering that the State party has not provided any explanation for the repeated postponements and the delay in proceedings, a delay of almost six years must be considered unreasonable and in violation of the right to an effective remedy in cases of torture.

¹⁶ Communications No. 1250/2004, *Rajapakse v. Sri Lanka*, Views adopted on 14 July 2006; No. 1320/2004, *Pimentel et al v. Philippines*, Views adopted on 19 March 2007. Counsel also refers to General Comment No. 31, to jurisprudence of the Committee Against Torture (Communication No. 171/2000, *Dimitrov v. Serbia and Montenegro*, Views adopted on 3 May 2005), and to jurisprudence of the European Court of Human Rights and the Inter-American Court of Human Rights on unreasonable delay and the right to an effective remedy.

6.7 As to the obligation to undertake a prompt, effective, and impartial investigation, the author recalls that the investigations in the present case were marked by serious delays throughout, and that indictments have not been filed. The State party has not provided any explanation why it has taken such a long time to commence and complete investigations and to file indictments. The State party has thus violated article 2, paragraph 3, read in conjunction with article 7 of the Covenant, to carry out prompt and effective investigations¹⁷.

6.8 As to the protection of victims and witnesses as an integral element of the right to an effective remedy, the author deems that it raises an issue under article 9 and article 2, paragraph 3, in conjunction with article 7 of the Covenant¹⁸. The author highlights that it is not clear what measures the State party took to ensure the protection of the author in line with the Committee's request under Rule 92. Intimidations and threats to the security of victims and witnesses discourage complainants and adversely impact on the exercise of remedies and the conduct of investigations. The lack of any victim or witness programme in Sri Lanka, and a series of cases where victims and witnesses in torture cases were threatened or even killed are evidence of a systemic failure that has resulted in impunity.

¹⁷ Counsel refers to General Comments No. 20 and 31, to the Committee's concluding observations on the Democratic People's Republic of Korea (CCPR/CO/72/PRK, paragraph 15), and jurisprudence of the Committee on the obligation of State parties to "investigate, as expeditiously and thoroughly as possible, incidents of alleged ill-treatment of inmates" (Communication No. 373/1989, *Stephens v. Jamaica*, Views adopted on 18 October 1995, paragraph 9.2). See also Communications No. 587/1994, *Reynolds v. Jamaica*, Views adopted on 3 April 1997; No. 599/1994, *Spence v. Jamaica*, Views adopted on 18 July 1996; and No. 1416/2005, *Alzery v. Sweden*, Views adopted on 25 October 2006. Counsel also refers to Reports of the Special rapporteur on Torture (E/CN.4/2004/56, paragraph 39; E/CN.4/2003/68, paragraph 26(i)), to the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, the Standard Minimum Rules for the Treatment of Prisoners, the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, and to jurisprudence of the Committee against Torture (Communication No. 59/1996, *Encarnacion Blanco Abad v. Spain*, Views adopted on 14 May 1998).

¹⁸ Counsel also refers to: General Comment No. 31; article 13 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Principle 33(4) of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment; and Principle 12(b) of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; as well as jurisprudence of the European Court of Human Rights.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with article 93 of its rules and procedures, decide whether or not it is admissible under the Optional Protocol of the Covenant.

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

7.3 As to the alleged violation of article 14, paragraph 1, the Committee notes the author's argument that the principle of equality before the law and before courts was breached as the Assistant Superintendent was treated as being above the law by the Supreme Court, and that the amount of compensation awarded by the Supreme Court also violated the principle of equality before courts and tribunals. The Committee recalls that article 14 guarantees procedural equality and fairness only and cannot be interpreted as ensuring the absence of error on the part of the competent tribunal¹⁹. It is generally for the courts of State parties to the Covenant to review facts and evidence, or the application of domestic legislation, in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice, or that the court otherwise violated its obligation of independence and impartiality²⁰. In the absence of any clear evidence of arbitrariness or misconduct, or lack of impartiality on the part of the Supreme Court, the Committee is not in a position to question the Supreme Court's evaluation of the evidence and consequently finds that this part of the communication is inadmissible under article 2 of the Optional Protocol.

7.4 The Committee also notes that the author's claim relating to the quantum of compensation is also alleged to violate articles 7 and 9 in conjunction with 2 of the Covenant. The Committee adopts the same reasoning as in paragraph 7.3 above to conclude that in the absence of any clear evidence of arbitrariness or impartiality on the part of the Supreme Court in arriving at the quantum of compensation awarded, the Committee is not in a position to question the amount and thus finds that this part of the communication is inadmissible under article 2 of the Optional Protocol.

7.5 As to the alleged violations of articles 7 and 9, read in conjunction with article 2, paragraph 3, the Committee notes that these issues were the subject of a fundamental rights complaint before the Supreme Court, which handed down its judgment in November 2006,

¹⁹ Communications No. 273/1988, *B.d.B. v. The Netherlands*, Inadmissibility decision adopted on 30 March 1989, paragraph 6.3; No. 1097/2002, *Martínez Mercader et al v. Spain*, Inadmissibility decision adopted on 21 July 2005, paragraph 6.3.

²⁰ See General Comment No. 32, paragraph 26. See also Communications No. 1188/2003, *Riedl-Riedenstein et al. v. Germany*, Inadmissibility decision adopted on 2 November 2004, paragraph 7.3; No. 886/1999, *Bondarenko v. Belarus*, Views adopted on 3 April 2003, paragraph 9.3; No. 1138/2002, *Arenz et al. v. Germany*, Inadmissibility decision adopted on 24 March 2004, paragraph 8.6.

six years after the complaint was lodged. It also notes that the State party has informed the Committee that subsequent to the Supreme Court judgment, the Attorney-General has decided to indict all the police officers against whom there were adverse findings by the Supreme Court, but that as of the date of this decision, though eight years have lapsed since these events, no such indictments have been made. The Committee notes that the State party has not provided any reasons why the fundamental rights case could not have been disposed of more expeditiously, or why the indictments against the police officers have not been lodged for almost eight years, nor has it claimed the existence of any elements of the case which might have complicated the investigation or the judicial determination of the case for such a long period. The Committee therefore finds that the delay in the determination of the fundamental rights complaint and in the filing of the indictments amounts to an unreasonably prolonged delay within the meaning of article 5, paragraph 2(b), of the Optional Protocol. It is also clear from the aforesaid facts that the author has exhausted the domestic remedies available to him.

7.6 As the State party has not contested the admissibility of any of the other claims advanced by the author, the Committee, on the basis of the information available to it, concludes that the claims based on articles 7 and 9; and article 2, paragraph 3, are sufficiently substantiated, for purposes of admissibility, and are thus admissible.

Consideration of the merits

8.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it, as provided under article 5, paragraph 1, of the Optional Protocol.

8.2 As to the claims of violations of articles 7 and 9 of the Covenant with regard to the author's alleged torture and the circumstances of his arrest, the Committee notes that the author has provided detailed information and evidence to corroborate his claims on the basis of which the State party's Supreme Court found violations of his rights under sections 11 and 13, paragraphs 1 and 2 of the Constitution. It also notes that the State party has not contested the authors' claims but merely informed the Committee that in 2007, the Attorney General had "decided" to issue indictments in this case and that they were being prepared at the time. The Committee reiterates its jurisprudence that the Covenant does not provide a right for individuals to require that the State party criminally prosecute another person. It considers, nonetheless, that the State party is under a duty to investigate thoroughly alleged violations of human rights, and to prosecute and punish those held responsible for such violations²¹.

8.3 The Committee notes that the author's fundamental rights application before the Supreme Court was disposed of only after a long delay of six years. Moreover, despite the fact that it has now been eight years since the author's arrest, the information provided by the State party with respect to the prosecution of those responsible has been minimal and despite requests it has not indicated whether indictments have actually been issued and when the cases would be likely to be heard. Under article 2, paragraph 3, the State party is under an obligation to ensure that remedies are effective. Expedition and effectiveness are particularly

²¹ See Communication No. 1250/2004, *Rajapakse v. Sri Lanka*, Views adopted on 14 July 2006, paragraph 9.3.

important in the adjudication of cases involving torture. The Committee is of the view that the State party cannot avoid its responsibility under the Covenant by putting forward the argument that the domestic authorities have already dealt or are still dealing with the matter, when it is clear that the remedies provided by the State party have been unduly prolonged without any valid reason or justification, indicating failure to implement these remedies. For these reasons, the Committee finds that the State party violated article 2, paragraph 3, read together with articles 7 and 9 of the Covenant. As far as the claims of separate violations of articles 7 and 9 are concerned, the Committee notes that the State party's Supreme Court has already found in favour of the author in this regard.

8.4 With regard to the claim that the State party violated the author's rights by failing to investigate the complaints filed by him with the police, the Committee notes that the State party has not addressed this allegation, nor has it provided any specific arguments or materials to refute the author's detailed account of the complaints filed by him. It recalls its jurisprudence that article 9, paragraph 1, of the Covenant protects the right to security of the person also outside the context of formal deprivation of liberty²². Article 9, on its proper interpretation, does not allow the State party to ignore threats to the personal security of non-detained persons subject to its jurisdiction. In the present case, the author has alleged having been threatened and pressurised to withdraw his complaints. In the circumstances, the Committee concludes that the failure of the State party to investigate these threats to the life of the author and to provide any protection, violated his right to security of person under article 9, paragraph 1 of the Covenant²³.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it reveal violations by the State party of article 2, paragraph 3, read together with articles 7 and 9, of the Covenant, as well as a separate violation of article 9, paragraph 1, of the Covenant with respect to the threats made against the author.

10. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author with an effective remedy. The State party is under an obligation to take effective measures to ensure that the author and his family are protected from threats and intimidation, that the proceedings against the perpetrators of the violations are pursued without undue delay, and that the author is granted effective reparation, including adequate compensation. The State party is also under an obligation to take measures to prevent similar violations in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation

²² Communications No. 821/1998, *Chongwe v. Zambia*, Views adopted on 25 October 2000; No. 195/1985, *Delgado Paez v. Colombia*, Views adopted on 12 July 1990; No. 711/1996, *Dias v. Angola*, Views adopted on 18 April 2000; No. 916/2000, *Jayawardena v. Sri Lanka*, Views adopted on 22 July 2002.

²³ See Communications No. 916/2000, *Jayalath Jayawardena v. Sri Lanka*, Views adopted on 22 July 2002, paragraph 7.3; No. 1353/2005, *Njaru v. Cameroon*, Views adopted on 19 March 2007, paragraph 6.3.

of the Covenant or not and that, pursuant to article 2 of the Covenant, that State party has undertaken to ensure all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
