



**International covenant  
on civil and political  
rights**

Distr.  
RESTRICTED\*

CCPR/C/87/D/1250/2004  
5 September 2006

Original: ENGLISH

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HUMAN RIGHTS COMMITTEE  
Eighty-seventh session  
10-28 July 2006

**VIEWS**

**Communication No. 1250/2004**

<u>Submitted by:</u>	Sundara Arachchige Lalith Rajapakse (represented by counsel, the Asian Human Rights Commission and the World Organisation against Torture)
<u>Alleged victims:</u>	The author
<u>State Party:</u>	Sri Lanka
<u>Date of communication:</u>	28 January 2003 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 26 January 2004 (not issued in document form).  CCPR/C/83/D/1250/2004 – decision on admissibility dated 31 March 2005.
<u>Date of adoption of Views:</u>	14 July 2006

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\* Made public by decision of the Human Rights Committee.

*Subject matter:* unlawful arrest; ill-treatment and torture in detention; threats from public authorities; failure to investigate

*Procedural issues:* None

*Substantive issues:* unlawful and arbitrary detention; torture in custody; liberty and security of the person

*Articles of the Covenant:* 7, 9 and 2, paragraph 3

*Article of the Optional Protocol:* 5, paragraph 2 (b)

On 14 July 2006, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1250/2004. The text of the Views is appended to the present document.

[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

Eighty-seventh session

concerning

**Communication No. 1250/2004\***

Submitted by: Sundara Arachchige Lalith Rajapakse  
(represented by counsel, the Asian Human Rights  
Commission and the World Organisation against  
Torture)

Alleged victims: The author

State Party: Sri Lanka

Date of communication: 28 January 2003 (initial submission)

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

Meeting on 14 July 2006,

Having concluded its consideration of communication No. 1250/2004, submitted to the  
Human Rights Committee on behalf of Sundara Arachchige Lalith Rajapakse 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 authors of the  
communication and the State party,

Adopts the following:

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\* The following members of the Committee participated in the examination of the present  
communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal  
Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo,  
Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada,  
Sir Nigel Rodley, Mr. Ivan Shearer and Mr. Hipólito Solari-Yrigoyen.

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

1. The author is Mr. Sundara Arachchige Lalith Rajapakse, a Sri Lankan citizen, who was nineteen years old at the time of his arrest on 18 April 2002<sup>1</sup>. He claims to be a victim of violations by Sri Lanka of articles 2, paragraph 3; article 7; and article 9 of the International Covenant on Civil and Political Rights. He is represented by counsel: the Asian Human Rights Commission and the World Organisation against Torture. The Optional Protocol entered into force for Sri Lanka on 3 January 1998.

#### **Facts as presented by the author**

2.1 On 18 April 2002, the author was arrested by several police officers at a friend's house. On arrest, he was beaten and dragged into a jeep outside the house. He was subsequently taken to Kandana Police station, where he was detained. He was charged with two counts of robbery. During his detention, he was subjected to torture for the purposes of obtaining a confession, which caused serious injuries and may be described as follows; he was forced to lie on a bench and beaten with a pole; held under water for prolonged periods; beaten on the soles of his feet with blunt instruments; and had books placed on his head which were then hit with blunt instruments.

2.2 On 20 April 2002, the author's grandfather found him lying unconscious on the floor of a police cell. He sought the help of a member of parliament, who made inquiries. When he returned to the police station, he was informed that the author had been taken to Ragama Hospital. A few hours after the author was hospitalised, one of the police officers, allegedly involved in the attack, obtained an order to remand him in custody. Subsequently, the author's mother and grandfather learned upon returning to Ragama Hospital, that the author had been transferred to Colombo National hospital. Following his transfer, he remained unconscious for 15 days and did not speak with clarity until after 13 May 2002. On 15 May 2002, he was transferred to a remand hospital at Weilikade.

2.3 On 16 May 2002, the United Nations Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment sent an urgent appeal to the State party, on behalf of the author. The same day, an application for the author's release was made to the Wattala Magistrates Court. On 17 May 2002, the author was produced before a magistrate, along with a medical report issued by the National Hospital. The medical report, undated, states that the "most likely diagnosis alleged to assault due to traumatic encephalitis". He was granted bail and subsequently taken back to the National Hospital by his mother and grandfather. He remained there for treatment until June 2002.

2.4 On 20 May 2002, the author filed a petition for violation of his fundamental rights in the Supreme Court of Sri Lanka. On 13 June 2002, the Supreme Court of Sri Lanka granted leave to proceed in the fundamental rights application; a hearing was scheduled for 23 October 2003. Since then, the hearing has been postponed twice and was expected to take place on 26 April 2004 (updates provided below).

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<sup>1</sup> The exact date of his birth is not provided.

2.5 The author was subjected to constant pressure to withdraw his complaint and has been living under extreme psychological stress, which has prevented him from working and supporting his family, whose members are now obliged to live on charity. His family fears for his life. He has been repeatedly called to testify alone at a police station, even though he has already made a statement. Threats were also made against his grandfather, to force him to withdraw the complaint he had made to the Human Rights Commission of Sri Lanka. Both the author and his family have made several complaints about the threats against him and his grandfather to the National Human Rights Commission Hotline, and to the National Human Rights Commission. The author does not mention the outcome of these complaints<sup>2</sup>.

2.6 On 24 July 2002, the Attorney General initiated an investigation into the torture allegedly suffered by the author, on the basis of which he filed a criminal action under the Torture Act against certain police officers in the Negambo Magistrates Court. This case remains pending, and the alleged perpetrators have neither been taken into custody nor suspended from their duties. A statement made by a judicial medical officer, on the basis of a report, dated 12 June 2002, which was recorded on 11 October 2002, confirmed that the author had been unconscious, described his injuries<sup>3</sup> and stated that “cerebral contusion following assault is the most likely diagnosis, but it is difficult to differentiate from Encephalitis. Most likely diagnosis alleged to assault due to traumatic encephalitis”. This last injury is one which is described as an injury that “endangers life”.

2.7 On 29 September 2003, the author was acquitted of two charges of robbery, as it transpired that the alleged victims had not made a complaint against him.

### **The complaint**

3.1 The author claims that the treatment deliberately inflicted upon him, with the intent of obtaining a confession, amounted to torture, prohibited under article 7 of the Covenant.

3.2 He claims that his arrest was not made in accordance with the procedures established under Sri Lankan law, as no reason was given for his arrest, no complaint had been filed against him, no statement was taken and his detention exceeded the legal limit of 24 hours. All the above is also said to violate article 9.

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<sup>2</sup> He provides press reports on the threats received.

<sup>3</sup> Healing scab abrasion 2”x3” on the right scapular region; healing scab abrasion 1”x 1” on the back of the right elbow; healing scab abrasion 2”x 1,1/2” on the front of the right chest; Contusion 2” x 3” on the back of the left hand; Contusion 2” x 3” on the front of the left forearm; Contusion 1”x 1,1/2” on the medial side of the left hand; Contusion 1”x2” on the lateral side of the left hand; contusion 2”x 2” on the sole of the left foot; Contusion 2” x 1” on the sole of the right foot.”

3.3 The author claims that the State party's failure to take adequate action to ensure that he was protected from threats issued by police officers violates article 9, paragraph 1, of the Covenant.<sup>4</sup>

3.4 He claims that as the State party failed to ensure that the competent authorities investigate his allegations of torture promptly and impartially, it violated his right to an effective remedy under article 2, paragraph 3, of the Covenant.

3.5 On exhaustion of domestic remedies, the author notes that he sought to obtain redress both through criminal procedures, and through a fundamental rights petition in order to obtain compensation. As a result of which he and his family have been threatened and intimidated. An assessment of the effectiveness and the reasonableness of the length of the proceedings should take into account the circumstances of his case and the general effectiveness of the proposed remedy in Sri Lanka. In this context, he notes that: no criminal investigation was initiated for over three months after the torture, despite the severity of his injuries, and the necessity to hospitalise him for over one month; the alleged perpetrators were neither suspended from their duties nor taken into custody, enabling them to place pressure on and threaten the author; and the investigations are currently at a standstill. Moreover, considering that the criminal procedures for dealing with torture allegations in Sri Lanka have generally been demonstrated to be ineffective, and that the authorities have shown a lack of diligence in the present case, the pending criminal or civil procedures cannot be considered to constitute an effective remedy for the alleged violations.

#### **The State party's submission on admissibility**

4.1 On 15 April 2004, the State party provided its submission on admissibility. It stated that the Criminal Investigation Department (CID) of the Police commenced their investigation on 24 July 2002, upon a direction of the Attorney General. Having concluded its investigations, the CID forwarded its report to the Attorney General who advised it to record further witness statements and to organize an identification parade. Subsequently, the Attorney General indicted the Sub-Inspector of Police under the Convention against Torture Act on 14 July 2004. If convicted, this police officer will be sentenced to a mandatory jail term of not less than seven years and a fine. The State party submitted that the Attorney General would take steps to direct counsel for the State, conducting the prosecution, to inform the trial judge of the need to expedite the proceedings in this case.

4.2 The State party confirmed that the fundamental rights application, in which the author seeks damages, against officers of the Kandana Police, for his alleged illegal arrest, detention and torture, remains pending. It submitted that the author has not claimed undue delay in the matter and made no attempt to request the Supreme Court to expedite the hearing of this case. Where similar requests were made to the Supreme Court on legitimate grounds, the Supreme

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<sup>4</sup> The author refers to the Committee's jurisprudence. See Case No. 821/1998, Chongwe v. Zambia, Views adopted on 25 October 2000, Case No. 195/1985, Delgado Paez v. Colombia, Views adopted on 12 July 1990, Case No. 711/1996, Dias v. Angola, Views adopted on 18 April 2000.

Court acceded to such requests by giving priority to such cases. In sum, the State party submitted that the entire communication is inadmissible for failure to exhaust domestic remedies.

4.3 On the basis of the State party's submission and on behalf of the Committee, on 25 April 2004, the Special Rapporteur on New Communications considered that the admissibility of the communication should be considered separately from the merits.

### **The author's comments on the State party's submission**

5.1 On 5 July 2004, the author commented on the State party's submission. He reiterated his initial argument on admissibility, and informed the Committee that there had been no developments in the criminal proceedings since the communication was registered. Despite the State party's submission that it would ensure an expeditious hearing of the criminal case, it did not indicate a date for the hearing, nor did it explain why the matter has been delayed for two years: this constitutes, in his view, an unreasonable delay. He added that this case would probably not be heard for some time, that there had been only one conviction in a case of torture in Sri Lanka and that that case was not heard until eight years after the torture took place.

5.2 As to the fundamental rights case pending before the Supreme Court, he observed that this case was adjourned for the third time on 26 April 2004 and was rescheduled for hearing on 12 July 2004. This delay is said to be unreasonable and in contravention of Sri Lankan law, under which the Supreme Court should hear and dispose of any fundamental rights applications within two months of filing. As to the State party's remark that the author may request the Supreme Court to expedite his case, the author was unaware of any such special procedure for making applications and claimed that the hearing of cases is a matter entirely at the discretion of the courts. The author noted that the State party makes no comment on the efficiency of criminal procedures in Sri Lanka in cases of torture generally. He explained that due to his extreme poverty an indefinite delay before he receives compensation would have serious consequences both for him and his family, as he is unable to afford proper medical and psychological treatment.

5.3 The author submitted that the procedure in itself is deficient, as is demonstrated by the fact that only one person has been charged in the criminal case although several were involved in the allegations. The State party's argument that the author only identified one individual in the identification parade is hardly satisfactory, since the author was in a coma for over two weeks following the alleged torture, and obviously under those circumstances his capacity for identification was limited. In addition, other evidence existed upon which other officers could have been charged, including documentary evidence submitted by the police officers themselves to the Magistrates Court and Supreme Court. In his view, sole reliance on the author's identification, particularly in the circumstances of this case, has resulted in the complete exoneration of the other perpetrators. The author also argued that the only charge filed against the police officer in the criminal proceedings is that of torture; no charges have been filed regarding the illegal arrest and/or detention.

5.4 The author observed that the State party offered no information on what measures have been adopted to put a stop to the threats and other measures of intimidation to which he has been subjected and adds that there is no witness protection programme in Sri Lanka.

5.5 On 10 December 2004, the author provided an update on the proceedings to date. He submitted that his hearing before the Supreme Court was again postponed and given a new hearing date of 11 March 2005. This is the fourth time the case had been rescheduled. According to the author, whether the case would be heard on that day would depend on how busy the Court is, and the case may very well be postponed again. The hearing in the High Court was scheduled to take place on 2 February 2005 which, according to the author, could take several years to determine. He stated that these prolonged delays have exacerbated his exposure to threats and serious risk of harm at the hands of those that do not wish him to pursue judicial remedies. He referred to the recent murder of a torture victim, Mr. Gerald Perera, in mysterious circumstances just a few days before a hearing in the High Court of Negombo, where he was to provide testimonial evidence against seven police officers accused of having tortured him, and fears the same fate. According to the author, Mr. Perera was assassinated on 24 November 2005, and during the criminal inquiry into the case, several police officers admitted that his murder was motivated by fears that they may go to jail if he had given evidence against them in the Negombo High Court. Threats to the author had continued and he had been forced into hiding to protect himself against harm.

5.6 On 10 March 2005, the author explained that the hearing in the criminal case, which was due to take place on 2 February 2005, was postponed again until 26 May 2005. Local counsel assisting the author filed a motion with the court on 2 February 2005 to expedite the case. The motion was denied on the grounds that a new judge had been assigned to the case and that it would be up to this judge to schedule the case according to his priorities. On 14 March 2005, the author stated that the 11 March 2005 hearing before the Supreme Court was not heard on the merits but postponed until 26 June 2005.

### **The Committee's admissibility decision**

6.1 During its 83<sup>rd</sup> session, on 8 March 2005, the Committee examined the admissibility of the communication. It noted that the issues raised by the author were still pending before the High Court as well as the Supreme Court, despite nearly three years having passed since their institution, and the police officer alleged to have participated in the torture of the author still continues under indictment in the criminal case. It considered it significant that the State party had not provided any reasons why either the fundamental rights case or the indictment against the police officer could not have been considered more expeditiously, nor had it claimed the existence of any elements of the case which should have complicated the investigations and judicial determination of the case preventing its determination for nearly three years.

6.2 The Committee found that the delay in the disposal of the Supreme Court case and the criminal case amounted to an unreasonably prolonged delay within the meaning of article 5, paragraph 2 (b), of the Optional Protocol. On 8 March 2005, the Committee declared this communication admissible.



**The State party's submission on the merits**

7.1 On 27 September 2005, the State party provided its submission on the merits. It largely reiterates its arguments that the case is inadmissible for lack of exhaustion of domestic remedies and that it is currently in the process of providing the author with an effective remedy. On the facts, it informs the Committee of the Attorney General's role as a party in all fundamental rights applications, during which he/she is represented by counsel. He/she does not appear for any respondents in fundamental rights applications, where allegations of torture are made, even though in all other matters he/she defends public officers in actions filed against them.

7.2 The State party informs the Committee that, as the outcome of the author's fundamental rights application to the Supreme Court would affect the determination of the High Court matter, the case to the Supreme Court was adjourned until completion of the proceedings before the High Court. The Supreme Court made an order that the author should file a motion in the Supreme Court when the High Court trial has concluded. The Supreme Court requested the High Court to expedite the police officer's trial.

7.3 On the sequence of High Court hearings, the State party submits that the police officer in question was indicted on 14 July 2004 and the case was fixed for trial on 13 October 2004. As the prosecution witnesses, including the author, were not present, the case was adjourned. The summonses were re-issued and the case fixed for hearing on 2 February 2005. Following a request by the police officer's counsel, the case was adjourned until 26 May 2005. On that date, the trial began and the author's evidence-in-chief was led. However, his evidence could not be concluded on that date as the author informed the Court that he was ill. The case was fixed for 12 July 2005, on which date the author's evidence-in-chief was concluded. The trial for cross-examination was fixed for 28 November 2005. The State party submits that the prosecution had not moved for any postponement of the case other than on 13 October 2004, when the author and the other prosecution witnesses did not attend. Counsel for the prosecution requested the trial judge to expedite the case and informed him of the communication to this Committee.

7.4 The State party urges the Committee to refrain from making any determination on the merits of this case until the conclusion of the High Court trial, as its Views could prejudice either the prosecution or the defence. If the police officer is convicted, the fundamental rights application would be taken up by the Supreme Court and a determination with regard to compensation for the author could be made<sup>5</sup>. The Supreme Court could direct that compensation be paid by the State party and/or the police officer convicted.

7.5 The State party provides general information on the High Courts in Colombo, including their heavy workload, and argues that to give preference in one case would be at

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<sup>5</sup> It does not appear that the consideration of the fundamental rights application in the Supreme Court is dependent upon a guilty verdict in the High Court. The Supreme Court case will be considered when the High Court case is determined and upon an application by the author.

the expense of others. The High Court exercises original jurisdiction in criminal trials and exercises provincial appellate jurisdiction. In the Negombo High Court, at the time of writing the submission, there were 365 cases on the trial roll and a further 167 cases to be fixed for trial. There have been two cases of conviction for torture by the High Court and an equal number of acquittals. As to the Supreme Court, there are nearly a thousand applications filed before it every year. Thus, although the Constitution provides for the disposal of applications within a period of two months, it is impossible to do so. The State party provides further information of a general nature on administrative remedies within Sri Lanka, including making applications to the Human Rights Commission and National Police Commission, which it considers are independent bodies.

7.6 On the complaints of violations of articles 2, 7 and 9, the State party submits that the author has invoked the jurisdiction of the Supreme Court, which was adjourned to prevent prejudice to the prosecution in the criminal trial. Thus, an effective remedy was provided, and a diligent investigation is currently being pursued. It also submits that “the police have at the request of the author given him special police protection on the basis of his complaint that he is under threat.”

#### **The author’s comments on the State party’s submission**

8.1 On 27 September 2005, the author provided the following comments on the State party’s submission. He submits that the State party’s repeated contention that the complaint is inadmissible, due to non-exhaustion of domestic remedies, is unjustified in light of the Committee’s decision on admissibility, as well as the lapse of an additional year, since its consideration, in which no progress has been made in the domestic proceedings. The State party does not provide an adequate explanation for the failure of the Courts to address these serious issues within a reasonable time; nor does it provide any timeframe for consideration. On the contrary, based on the current domestic law and practice, there is little prospect of a final judicial decision in the near future. The decision to postpone the hearing of the Supreme Court was taken on the basis of a submission made by the police officer’s counsel. Assuming the police officer is convicted, he will have the right to appeal to the Court of Appeal, which will take several years, and subsequently, as a matter of law, to the Supreme Court, which can also cause additional delays. As the hearing of the fundamental rights case has been adjourned until the end of the High Court trial, there is no reason why it will not be adjourned until the entire process is over.

8.2 The author submits that, as the State party does not deny the facts of the case as submitted by him, but relies merely on the fact that the matter is being dealt with by the domestic courts, the Committee should give due weight to his account of the facts. In addition, he refers to the jurisprudence of the Committee that, when substantiated allegations made by authors of a communication go unrefuted, they must be considered to be established. The author reiterates its arguments on the merits, in particular with respect to his claim under article 2, paragraph 3. He refers to the lack of progress in the proceedings<sup>6</sup>, in which the total time of the recording of

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<sup>6</sup> He provides the chronology before the High Court as follows :

14.07.04 – Indictments served on the accused  
29.07.04 – Case called again.

evidence, since the filing of the indictment in July 2004 to date, is less than two hours of actual court time. There are ten witnesses in this case and the taking of evidence from the first witness (the author) is still not yet completed. Thus, recording the evidence of the other witnesses may take many more years.

8.3 According to the author, neither he nor any of his witnesses absented themselves from court since the summonses were served. He takes no responsibility for any of the postponements, and submits that it is not within his power to make any application to expedite his case. He has written to the Attorney General, who is in such a position, as well as to human rights organisations, but no measures have been taken to respond to his requests. The Attorney General is party to the proceedings of both the High Court and the Supreme Court and, is the only party who can apply for the case to be expedited. He submits that the issue of important generalised delays was raised by the Committee against Torture in its Concluding Observations on Sri Lanka in November 2005, which recommended to the State party to ensure speedy trials, especially for victims of torture.

8.4 In the author's view, the unreasonably prolonged domestic delays are reducing the chances of a fair outcome. Important evidence could be lost while waiting for trial. In particular, one of his key witnesses, his grandfather, is now 75 years of age and the author fears that he may pass away or have memory loss due to age before the end of the proceedings. The author refers to a report of the Special Rapporteur on Torture<sup>7</sup> to demonstrate that it is quite common in the State party for the accused to be acquitted due to the absence of witnesses.

8.5 While awaiting the hearing, the author submits that he has had to leave his home and his job out of fear of reprisals by police officers and subsists thanks to the charity of a human rights organisation. He states that both the Committee against Torture and the Special Rapporteur on Torture have perceived the extremely precarious situation of victims of torture who decide to seek justice before Sri Lankan courts. They have called on the State party to provide witness protection to victims of torture, since there is no witness protection programme in the State party.

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- 13.10.04 – Case called for trial but no evidence taken.
  - 02.02.05 – A trial date but no evidence is heard.
  - 26.05.05 – The evidence of the author commences: evidence taken for about 45-50 minutes.
  - 12.07.05 – The author's examination in chief continues: evidence taken for about 25 minutes.
  - 23.08.05 – The author's cross examination begins: evidence recorded for about 45 minutes.
  - 28.11.05 – The case is called and postponed without recording any evidence.
  - 04.05.06 – The next scheduled date.

<sup>7</sup> E/CN.4/2004/56/Add.1, 23 March 2004.

## Issues and proceedings before the Committee

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

9.2 The Committee takes due note of the State party's argument reiterating its view that domestic remedies have not been exhausted. The Committee reiterates its finding that the delay in the disposal of the Supreme Court case and the criminal case amounts to an unreasonably prolonged delay within the meaning of article 5, paragraph 2 (b), of the Optional Protocol. This view is only strengthened by the fact that both cases, nearly one and a half years after the admissibility decision, continue to be pending.

9.3 With regard to the merits of the communication, the Committee notes that criminal proceedings, against one of the alleged perpetrators, have been pending in the High Court since 2004, and that the author's fundamental rights application before the Supreme Court has been adjourned, pending determination of the High Court proceedings. 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.<sup>8</sup> It considers, nevertheless, 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 violations.

9.4 The Committee observes that, as the delay in the author's fundamental rights application to the Supreme Court is dependant upon the determination of the High Court case, the delay in determining the latter is relevant for its assessment of whether the author's rights under the Covenant were violated. It notes the State party's argument that the author is currently availing himself of domestic remedies. The Committee observes that the criminal investigation was not initiated by the Attorney General until over three months after the incident, despite the fact that the author had to be hospitalised, was unconscious for 15 days, and had a medical report describing his injuries, which was presented to the Magistrates Court on 17 May 2002. While noting that both parties accuse each other of responsibility for certain delays in the hearing of this case, it would appear that inadequate time has been assigned for its hearing, viewed in light of the numerous court appearances held over a period of two years, since the indictments were served (four years since the alleged incident), and the lack of significant progress (receipt of evidence from one out of 10 witnesses). The State party's argument on the High Court's large workload does not excuse it from complying with its obligations under the Covenant. The delay is further compounded by the State party's failure to provide any timeframe for the consideration of the case, despite its claim that, following directions from the Attorney General, Counsel for the prosecution requested the trial judge to expedite the case.

9.5 Under article 2, paragraph 3, the State party has an obligation to ensure that remedies are effective. Expedition and effectiveness are particularly important in the adjudication of cases

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<sup>8</sup> Case No. 213/1986, H.C.M.A. v. the Netherlands, adopted 30 March 1989; Case No. 275/1988, S.E. v. Argentina, adopted 26 March 1990; Case Nos. 343-345/1988, R.A., V.N. et al. v. Argentina, adopted 26 March 1990.

involving torture. The general information provided by the State party on the workload of the domestic courts would appear to indicate that the High Court proceedings and, thus, the author's Supreme Court fundamental rights case will not be determined for some time. The Committee considers that the State party may not avoid its responsibilities under the Covenant with the argument that the domestic courts are dealing with the matter, when it is clear that the remedies relied upon by the State party have been prolonged and would appear to be ineffective. For these reasons, the Committee finds that the State party has violated article 2, paragraph 3, in connection with 7 of the Covenant. Having found a violation of article 2, paragraph 3, in connection with article 7, and in light of the fact that the consideration of this case, as it relates to the claim of torture, remains pending before the High Court, the Committee does not consider it necessary, in this particular case, to determine the issue of a possible violation of article 7 alone of the Covenant.

9.6 As to the claim of violations of article 9, as they relate to the circumstances of his arrest, the Committee notes that the State party has not contested that the author was arrested unlawfully, was not informed of the reasons for his arrest or of any charges against him and was not brought promptly before a judge, but merely argues that these claims were made by the author in his fundamental rights application to the Supreme Court which remains pending. For these reasons, the Committee finds that the State party has violated article 9, paragraphs 1, 2 and 3, alone and together with article 2, paragraph 3.

9.7 The Committee notes that the State party contests the claim under article 9, paragraph 1 that it failed to take adequate action to ensure that the author was and continues to be protected from threats issued by police officers, since he filed his petition in his fundamental rights case. The Committee also observes that the author denies that there is any witness protection programme within the State party and that he has had to go into hiding out of fear of reprisals. The Committee recalls its jurisprudence that article 9, paragraph 1 of the Covenant protects the right to security of person also outside the context of formal deprivation of liberty.<sup>9</sup> The interpretation of article 9 does not allow a State party to ignore threats to the personal security of non-detained persons subject to its jurisdiction. In the current case, it would appear that the author has been repeatedly requested to testify alone at a police station and has been harassed and pressurised to withdraw his complaint to such an extent that he has gone into hiding. The State party has merely argued that the author is receiving police protection but has not indicated whether there is any investigation underway with respect to the complaints of harassment nor has it described in any detail how it protected and continues to protect the author from such threats. In addition, the Committee notes that the alleged perpetrator is not in custody. In the circumstances, the Committee concludes that the author's right to security of person, under article 9, paragraph 1 of the Covenant has been violated.

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<sup>9</sup> Case No. 821/1998, Chongwe v. Zambia, Views adopted on 25 October 2000, Case No. 195/1985, Delgado Paez v. Colombia, Views adopted on 12 July 1990, Case No. 711/1996, Dias v. Angola, Views adopted on 18 April 2000. Case no. 916/2000, Jayawardena v. Sri Lanka, Views adopted on 22 July 2002.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose violations of article 2, paragraph 3 in connection with article 7; article 9, paragraphs 1, 2 and 3, as they relate to the circumstances of his arrest, alone and together with article 2, paragraph 3; and article 9, paragraph 1, as it relates to his right to security of person, of the Covenant.

11. The Committee is of the view that the author is entitled, under article 2, paragraph 3(a), of the Covenant, to an effective remedy. The State party is under an obligation to take effective measures to ensure that: (a) the High Court and Supreme Court proceedings are expeditiously completed; (b) the author is protected from threats and/or intimidation with respect to the proceedings; and (c) the author is granted effective reparation. The State party is under an obligation to ensure that similar violations do not occur in the future.

12. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and 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 90 days, information about the measures taken to give effect to 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.]

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