



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2412/2014^{*}, ^{**}

<i>Communication submitted by:</i>	Roy Manojkumar Samathanam (represented by counsels, Karima Toulait, Amanda Ghahremani and Matt Eisenbrandt, from the Canadian Centre for International Justice)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Sri Lanka
<i>Date of communication:</i>	13 November 2013 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 4 June 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	28 October 2016
<i>Subject matter:</i>	Ill-treatment and torture of the author by officers from Terrorist Investigation Division while in detention
<i>Procedural issues:</i>	Non-cooperation of State party and exhaustion of domestic remedies
<i>Substantive issues:</i>	Prohibition of torture, cruel, inhuman or degrading treatment or punishment; right to liberty and security of person; respect for the inherent dignity of the human person; and fair trial
<i>Articles of the Covenant:</i>	7, 9, 10 and 14

* Adopted by the Committee at its 118th session (17 October-4 November 2016).

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

Articles of the Optional Protocol: 5(2)(b)

1. The author of the communication is Roy Manojkumar Samathanam, a Canadian national, born on 20 September 1970 in Sri Lanka. He claims that the State party violated his rights under articles 7, 9, 10 and 14, of the International Covenant on Civil and Political Rights (the Covenant). The author is represented by counsel.¹

Facts as presented by the author

2.1 The author was born in Colombo and is an ethnic Tamil. In 1990, he went to Canada and requested refugee status. Later, he became Canadian citizen. In 2005, he took advantage of a lull in the civil war to return to Sri Lanka and marry the woman who is now his wife. When she became pregnant, they decided to remain in Sri Lanka until the child was born. The author claims that from time to time, he assisted a friend with the importation of goods for the friend's computer software shop. In September 2007, the friend imported 600 mobile phones to Sri Lanka that were delivered to the author's house, waiting for the friend picking them up the next day. On 14 September 2007 at night, plainclothes officers arrived at the authors home, armed with machine guns. They identified themselves as being part of the Terrorist Investigation Division (TID) and asked to inspect the boxes of goods in the author's house. He explained to the officers that the goods belonged to his friend. The officers told him that there was a GPS device in the boxes and that this was illegal.

2.2 The author claims that subsequently he was handcuffed, blindfolded and transported to a TID's detention facility in downtown Colombo. The officers who took him to the TID's facility threatened to kill him. His pregnant wife and their child were placed under house arrest, guarded by TID officers. They were not permitted to contact anyone outside. Still, his wife managed to contact her family and the High Commission of Canada (HCC) after she threw a note through a window to a neighbour to inform them of what was happening. The officers also arrested the author's friend and took him to the TID facility. The author claims that the Officer in Charge (OiC) of the TID's detention facility informed the author that it was illegal to possess a GPS device and questioned him for a period of 10-15 minutes. The OiC accused the author of being a member of the Liberation Tigers of Tamil Ealam (LTTE), and told him that they had evidence to that effect. Later he was also accused of operating the intelligence wing of the LTTE in Toronto, Canada.

2.3 The author was detained at the TID's facility from 14 September 2007, for an initial period of 90 days, by order of the Additional Secretary of the Ministry of Defence, pursuant to paragraph 1 of Regulation 19 of the Emergency (Miscellaneous Provisions and Powers). According to the order, the Ministry of Defence's authorities were of the opinion that such measure was necessary to prevent the author from acting in a manner prejudicial to the national security or the maintenance of public order as there were reasons to suspect that he was involved in the commission of offences by illegally importing high tech communication and radar equipment and providing them to the LTTE.

2.4 Within a few days of his arrest, the author was visited by a Canadian official from the Department of Foreign Affairs and International Trade ("DFAIT") and a local Sri Lankan staff of the High Commission of Canada (HCC). The meeting took place in the office of the OiC, who was present, and lasted 10-15 minutes. The author told the Canadian officials that he did not know the reasons of his arrest and asked them to look into the

¹ The Optional Protocol to the Covenant entered into force for Sri Lanka on 3 January 1998.

situation of his wife and daughter. He also told them that he was diabetic and that he had been without medication since the date of the arrest.

2.5 The author claims that in the TID's facility he was kept separated from other local Sri Lankan prisoners and was not put in a regular detention cell. Instead, he was kept in a Sergeant's office along with a few other foreign nationals, handcuffed to a desk at all times, and forced to sit or lay on the floor in an uncomfortable position, without a pillow or mattress. He was also forced to sleep among cockroaches and rats, and in tightly-closed handcuffs for only a few hours a night. The guards daily berated him, calling him "Canadian Tiger", and threatened to beat or kill him. He was given very little food and only had a small bottle of water per day. He was not provided with medication for diabetes until the first time he was visited by officials from the HCC, which was a few days after his arrest. As a result of not being provided with medication, his untreated diabetes caused significant drowsiness. Moreover, the lack of medication caused that he had to urinate very frequently but the guards did not always allow him to use the washroom, and occasionally he had no choice but to urinate in the clothes he was wearing and to stay in those clothes. From time to time, officers entered into the Sergeant's office to mistreat the detainees while interrogating them. The author and other detainees were unchained from their desks and re-handcuffed into painful positions. The TID guards then slapped them or beat them with hard rubber or metal pipes. On other occasions, the author was forced to watch other detainees being beaten and tortured and to listen to their screams of pain and anguish. The officers also threatened him, by telling him that he would be similarly tortured; that he had no need for a lawyer; and that he was never going to leave the facility or that they would shoot him in the head. They also threatened him with arresting his wife and raping her.

2.6 The author submits that his wife was able to visit him on 22 September 2007. Subsequently, she was permitted to visit him every Saturday, for only 10 to 15 minutes in the presence of guards. During the months the author was detained at the TID's facility, the author was not brought before a judge or other judicial officer. The lawfulness of his detention was never reviewed. He was not permitted to see a lawyer.

2.7 In October 2007, UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment visited the TID's detention centre twice. The Special Rapporteur later reported accounts of torture and ill-treatment collected during his visit.² On 19 October 2007, the author met the International Committee of the Red Cross (ICRC) delegates, who were visiting the TID's facility. They provided him with a registration card.³ The author explained that he had nothing to sleep on and, as a result of the ICRC's intervention, he was given a thin mattress in, approximately, December 2007.

2.8 On the evening of 17 December 2007 the TID facility's second-in command entered the room where the author was held. He was accompanied by several other off-duty guards. They were all drunk. The second-in command told the author that he was not entitled to an ICRC mattress. The officers began to insult the author and beat him in the stomach, face, abdomen, arms, and legs, saying that they would kill the "Canadian LTTE". He suffered a swollen left wrist, injured knees, and pain in the stomach and groin area as a result of this beating. The following morning, the OiC warned him not to tell the ICRC about the beating

² The communication refers to Report of The Secretary-General's Panel of Experts on Accountability in Sri Lanka, (31 March 2011).

³ The author provides a copy of "Detention attestation" issued by the ICRC on 4 March 2011, that states that the author was visited from the first time by ICRC delegates in TID, Colombo District, on 19 October 2007; that between 6 November 2007 and 10 August 2009, he was visited in the Boosa Detention Camp (Galle District) and the Welikada Prison (Colombo); and that according to the authorities, he was released on 27 August 2010 from the Welikada Prison, Colombo District.

that he had received. He then warned the author that these types of beatings would not happen anymore once he signed a confession. If he refused to sign the confession, the TID would arrest his wife and child and detain them in the detention centre. The author requested to have access to a lawyer, without success. The author maintained his innocence and refused to sign any kind of confession.

2.9 In April 2008, he was transferred to the Boosa Detention Centre in Galle (Boosa Centre). On 1 May 2008, the Additional Secretary of the Ministry of Defence ordered to extend the author's detention for 90 days in this detention centre. The author submits that in the Boosa Centre he was kept in solitary confinement in a small cell without a toilet or water. He was forced to urinate in a bottle and defecate in a plastic bag. Each day, he was taken to an interrogation room for questioning. He was not beaten by the guards, but he was forced to observe severe beatings and threatened with being inflicted the same brutal treatment. In April or May 2008, the author was visited by an official of the HCC. The author told the official about the events he went through and witnessed at the Boosa Centre and asked him to try to get him sent back to a jail in Colombo.

2.10 In late July 2008, the author was temporarily taken back to the TID's facility in Colombo. The author claims that he was pressured to confess to being a member of the LTTE's international intelligence wing. The interrogators threatened to arrest his wife, rape her, and kill his child if he refused to confess. In early August 2008, the interrogators told him that they would get a detention order against his wife. After an hour of interrogation, in order to protect his wife from the threats, the author hand-wrote in Tamil a statement which stated that he had imported an illegal GPS device for the LTTE. Then, the author was sent back to the Boosa Centre.

2.11 In or about September 2008, the author's case was finally brought before a Magistrate's Court. The author claims that at his brief first appearance, the author submitted before the magistrate that he was a Canadian citizen; that he had not been charged with any offence; and that there were no legal grounds for his arrest and continued detention. The author claims that the magistrate responded that "Under the Emergency Regulations we can keep people for up to 18 months without charges"; that the police produced a four-page report containing numerous lies to justify his detention, including that he had used a company registered in his wife's name to import high-tech devices from Southeast Asia; that he was a member of the LTTE intelligence wing and had a close relationship with the rebel intelligence chief Mr P.A.; and that he and another Tamil man were LTTE associates who were conspiring to assassinate government ministers and military generals in Colombo. Based on this report, the magistrate authorized the author's continued detention and transfer to Welikada Prison.

2.12 On or about 4 November 2008, the High Court No. 2 (which dealt with the Emergency Regulations) issued an indictment against him. It submitted that the author had personal knowledge that a member of the LTTE intelligence wing was operating within Sri Lanka, and that he failed to alert the Sri Lankan authorities about this situation. Approximately on 13 October 2009, the author appeared before the High Court No. 1 (which dealt with the Prevention of Terrorism Act "PTA") and was formally charged with illegally importing a GPS device and aiding and abetting the LTTE.

2.13 While in detention at Welikada Prison, the author was visited twice by ICRC delegates and also by staff of the HCC. He claims that he was kept in a maximum security detention, alongside convicted murderers. Guards treated him more harshly and refused to provide him with his diabetes medication. At this time, the author began experiencing joint and chest pains. On 2 March 2010, the HCC sent a letter to the Commissioner of Prisons

requesting the authorities to make the necessary arrangement to take him to the hospital for medical treatment.⁴ The author further claims that he was later taken to the general hospital, where a doctor said he needed to be admitted, but the police refused and returned him to Welikada Prison. The doctor wrote a note, prescribing medication for the chest pain, and gave it to the escort guard for the prison hospital. However, the author never received any medication for chest pain.

2.14 The author claims that he was brought before the court approximately once every two weeks after his first court appearance. Each time the court extended his detention order, without adjudicating the merits of the charges against him. On unspecified date, the author requested his lawyer to do something to resolve the situation. The lawyer talked to the Attorney-General Department, with whom he negotiated an agreement. He was eventually able to reach an agreement with the prosecutor to drop all the charges, except one regarding possession of a GPS device. Believing he had no other choice, he agreed to plead guilty to this charge and to pay a fine of five *lakhs*, which he did on 19 August 2010. He was released from Welikada prison on 27 August 2010.

2.15 The author returned to Canada on 28 April 2011. He submits that after he reported his story to a Canadian newspaper, the *National Post*, the Sri Lankan government refused to give a police clearance for his family to leave the country. Eventually, on 14 February 2012, his wife and children were able to travel to Canada. The author, wife and children reside in Toronto, Canada. However, he continues suffering physical and psychological consequences of the events he went through in Sri Lanka. In this connection, he argues that he has pain in his left leg, and pain and numbness in his hand from the beating on 17 December 2007; that he suffers from an irregular heartbeat and hypertension; that he needs painkillers; that he has been treated for depression and diagnosed with PTSD. As a result of his suffering and medical condition, the author is unable to work.

2.16 The author submits that there were no available domestic remedies for him to exhaust at the time his rights were violated, nor do they currently exist since they would be ineffective. From the time of his arrest and detention the author was denied legal protection and judicial guarantees and legal proceedings suffered a considerable delay. Since his detention was ordered in accordance with the 2005 Emergency Regulations, which did not observe human rights standards,⁵ he was unable to file an application before ordinary courts. This made it impossible for him to pursue any remedies. The Public Security Ordinance 1947 and the PTA gave State's official immunities which prevented the author from pursuing a civil action against the State party and its official responsible for his detention and torture. Likewise, the Code of Criminal Procedure, Act no. 15 of 1979 (as amended) provided State's official with immunity from suit for actions taken in good faith in the discharge of their duties. In any event, even if civil action against the State and/or individuals involved was available to the author, it cannot be considered an adequate and effective remedy in his case. The author further submits that under the Sri Lankan legal system, it was possible to bring a fundamental rights application before the Supreme Court or making representations to the Attorney-General (AG) in an attempt to have a law declared *ultra vires* or encourage prosecution of public officials. However, none of these alternatives constituted an effective remedy since the judicial system was not independent and impartial in Sri Lanka. Other individuals who have brought fundamental rights

⁴ The communication provides a copy of the High Commission of Canada's facsimile addressed to the Superintendent of Prisons in Colombo on 2 March 2010.

⁵ The communication refers to the International Commission of Jurists (ICJ), Authority without accountability: The crisis of impunity in Sri Lanka, (November 2012) pp. 31 and 37; and ICJ, Beyond Lawful Constraints: Sri Lanka's Mass Detention of LTTE Suspects, (September 2010) pp. 6 and 13.

applications before the Sri Lankan Supreme Court were unsuccessful,⁶ for a variety of different reasons or the applications remained pending after several months or years. In addition, the AG was not impartial and often refused to take action on complaints brought by individuals who have alleged violations of their fundamental rights, or obstructed the proceedings. In this connection, the author asserts that he would also have been unsuccessful had he filed a fundamental rights application against the State and/or particular State officials due to the politicization of the AG's office. The author claims that he would not have been permitted to bring an application for judicial review of the ERs in light of the PSO 1947 and Regulation 19(10) of ER 2005 to the Supreme Court since the Regulation 19(10) stated that any administrative detention order made under ER 2005 "shall not be called in question in any court on any ground whatsoever".

2.17 Upon release from detention, he felt there was no reasonable prospect of success in attempting to overturn his conviction after experiencing the unfair practices of the legal system.⁷ In this connection, the author submits that several cases similar in fact to his case were brought before Sri Lanka courts and were unsuccessful. He points out that the shortcomings in the criminal proceedings, such as undue delays in the investigation of human rights violations, profoundly affected the fairness of the criminal justice system.⁸ He also feared for his and his family's safety. His fear of reprisal was based on the acts of torture and threats that he experienced during his detention as well as the authorities' reaction after he reported his story to a newspaper in Canada. In addition, the author claims that it would be too dangerous for him to return to Sri Lanka in pursuit of any domestic remedies. Despite increased allegations of widespread torture, ill-treatment and disappearances at the hands of law enforcement officials, impunity concerning human rights violations has over the years become institutionalized and systematized in Sri Lanka.⁹ In this context, the Judiciary lacks independence, leaving victims, in particular persons with Tamil origin, with little or no prospect of remedies or reparations for serious human rights violations.¹⁰ Although there are some judicial rulings, successful prosecutions, and other positive results which have favoured victims in Sri Lanka, it is well documented that the success stories are few and far between and remain exceptions to the general trend of impunity that exists in Sri Lanka. Against this background any effort by the author to pursue remedies in Sri Lanka would be futile.

The complaint

3.1 The author claims that the State party violated his rights set forth in articles 7, 9, 10 and 14 of the Covenant.

3.2 As a background information, the author submits that in the context of the armed conflict between the Sri Lankan security forces and the LTTE, since 2005 the authorities

⁶ The author refers to *Edward Sivalingam v. Jayasekara*, SCFR Application No. 326/2008, decided on November 2010; and *Sri Lanka v. Makavitage, Suresh, Gunasena, and others*, Case No. HC326/03 (Negombo High Court).

⁷ The author refers to communications n° 1293/2004, *Dios Prieto v. Spain*, decision of inadmissibility adopted on 25 July 2006, para. 6.3; n°1313/2004, *Castaño López v. Spain*, decision of inadmissibility adopted on 25 July 2006, para. 6.3.

⁸ The authors refers to Report of The Secretary-General's Panel of Experts on Accountability in Sri Lanka, see footnote n° 6, ii-iii, para. 320.

⁹ The author refers to the Report of The Secretary-General's Panel of Experts on Accountability in Sri Lanka, see footnote n° 6, p. 100-101.

¹⁰ The author refers to ICJ 2012 Report, note 5 above, p. 12, 39, 55, 72, 111, 166-67; International Crisis Group, *Sri Lanka's Judiciary: Politicised Courts, Compromised Rights*, Asia Report No. 172 (30 June 2009) p. 8; and International Bar Association, "Justice in Retreat: A report on the independence of the legal profession and the rule of law in Sri Lanka" (May 2009).

increased military and police operations in which Tamils were frequently victims of arbitrary arrests, extrajudicial executions, enforced disappearances and torture. Reports indicate that war crimes and crimes against humanity were committed, particularly during the final stages of the armed conflict from February to May 2009.¹¹ During these years, torture was widely practised in Sri Lanka,¹² especially in the context of counter-terrorism operations by the armed forces and the police, including the TID.¹³ He further claims that the TID was implicated in numerous instances of mistreatment and torture. Persons held in TID detention facilities were often *incommunicado* and denied visits from family members, lawyers and human rights groups.¹⁴

3.3 As to his allegation under article 7, the author claims that at the moment of his arrest and while in detention he suffered a treatment contrary to article 7 of the Covenant by TID officials and guards. In particular, in August 2008, he was interrogated for several hours and forced to sign a false confession under torturous conditions, in which he stated that he had imported an illegal GPS device for the LTTE. The author alleges that all the events he went through, individual and collectively, constitutes torture. Should the Committee disagree with this assessment, the author submits that they constitute cruel, inhuman or degrading treatment.

3.4 The author further submits that the State party violated his rights under article 9 of the Covenant. He was not detained on lawful grounds, as the grounds for his initial arrest were neither reasonable nor probable. In addition, the TID officers who arrested him did not inform him of any discernible reason for his arrest. He ever appeared before a magistrate; during this period, he was given no opportunity to challenge any aspect of his detention. He was not allowed access to legal counsel until his first appearance before a

¹¹ The communication refers to Report of The Secretary-General's Panel of Experts on Accountability in Sri Lanka, (31 March 2011), ii-iii, 66-69; Immigration and Refugee Board of Canada, Sri Lanka: Treatment of Tamils in Colombo by Members of the Armed Forces and Police (2005-2006) (11 December 2006); and Human Rights Watch (HRW), Return to War, (6 August 2007).

¹² Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: Mission to Sri Lanka, (February 2008) p. 7, 19, 20,23, 25, 28-34 and 46-50; HRW, Legal Limbo: The Uncertain Fate of Detained LTTE Suspects in Sri Lanka, (February 2010), p. 7,11,12, and 16; Asian Human Rights Commission, Recovering the authority of public institutions: A resource book on law and human rights in Sri Lanka, (2009), p. 42-44 and 158.

¹³ The author claims that the Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 2005 (ER 2005) and Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities Regulations) No. 7 of 2006 (ER 2006) as well as the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 (PTA) regulate the Sri Lankan Army's and the police's, including the Terrorist Investigation Division (TID), operations. The author submits that the PTA, inter alia, allows for a suspect to be detained by the security forces, without charge for up to 18 months or right of habeas corpus; that it had a vague and far-reaching definition of "unlawful activities"; that it allows for impunity of official who commit torture against persons detained under this legislation, for involuntary and forced confessions made in police custody to be submitted as evidence in court and reverses the burden of proof such that the detainee must prove that their confession was made under duress; and that detainees arrested under the PTA and/or ERs were routinely denied due process and held arbitrary without charges.

¹⁴ The author refers to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: Mission to Sri Lanka, (February 2008), p. 7 and 20; Immigration and Refugee Board of Canada, Sri Lanka: Changes to the emergency regulations and the Prevention of Terrorism Act (August-September 2011), (29 September 2011); Amnesty International (AI), Locked Away: Sri Lanka's Security Detainees, 2012, p. 10-14; HRW, "Sri Lanka: 'Bait and Switch' on Emergency Law," 7 September 2011; Asian Human Rights Commission, Police torture cases in Sri Lanka: 1998-2011, (2012); and HRW, "We Will Teach You a Lesson" Sexual Violence Against Tamils by Sri Lankan Security Forces, (February 2013).

magistrate, which occurred only after he had been held in detention for one year without charges.

3.5 The author claims that, in addition to a violation of article 7, the conditions at the different centres in which he was held constituted a violation of his rights under article 10 of the Covenant as well as numerous provisions of the Standard Minimum Rules for the Treatment of Prisoners. He points out that while in detention he was denied medication for diabetes treatment for some time, and officials at Welikada Prison did not provide him medication for chest pains despite a doctor's prescription and instructions to do so. He was also forced to sleep on the ground among cockroaches and rats in tightly-closed handcuffs, all the while chained to a desk. At the Boosa Detention Camp, he was kept in solitary confinement, where he was forced to urinate in a bottle and defecate in a plastic bag. He was not segregated from prisoners convicted of murder and other violent offences.

3.6 The author finally submits that the State party has violated his rights under article 14(1)(2) and (3)(g). The fairness of the judicial process was undermined and vitiated because the police submitted false information to justify the author's continued detention and used against him a confession made under torturous conditions. The conduct of the court proceedings also violated his rights to a fair trial because the court did not act independently or impartially. The court failed to investigate the ill-treatment inflicted to the author. Moreover, the use of an involuntary confession that he made under duress is a violation of article 14(3)(g) of the Covenant. The author further claims that cases where the Attorney-General proceeded with an indictment were often based solely on forced confessions signed by the accused and that due to section 16(2) of the *PTA*, forced confession was admissible as evidence with the burden placed on the accused to prove that the confession was "irrelevant". In his case, the charges were dropped for lack of evidence except the one charge to which he falsely confessed as a result of his torture and prolonged arbitrary detention.

3.7 The author requests the Committee to recommend the State party to inter alia: i) acknowledge its breaches to the Covenant; ii) carry out an investigation concerning the violations suffered by him and take disciplinary and criminal actions against the perpetrators; iii) provide him a compensation for the harm suffered by him and his family as a result of the violations committed and for other assessable damages; iv) provide assurance or guarantees of non-repetition; and v) take the necessary legislative measures to give effect to the right enshrined in articles 7, 9, 10 and 14 of the Covenant.

Lack of cooperation from the State party

4.1 By notes verbales of 4 June 2014 and 22 February 2015, the State party was requested to submit information to the Committee on the admissibility and merits of the communication. On 27 August 2014, the State party informed the Committee that it was unable to provide the information requested, owing to its Supreme Court's judgment in the case of *Nallaratnam Singarasa v. Attorney General* of 15 September 2006, in which the Supreme Court stated that the Government of Sri Lanka by acceding to the Optional Protocol had violated the provisions of the Constitution; and that only courts and tribunals set up under the Constitution could vindicate the rights of the people of Sri Lanka. The State party stated that it was imperative that it respected the judgments of its domestic courts. On 21 May 2015, the State party informed the Committee that following the Presidential election of 8 January 2015, its authorities initiated a process of consultations, taking into account the views of the Committee and the UN High Commissioner for Human Rights, on the possibilities to review the Supreme Court's decision mentioned above; and that a response pertaining to the communication would be submitted following this process.

4.2 By notes verbales of 15 June 2015, 22 December 2015 and 23 May 2016, the State party was again requested to submit information to the Committee on the admissibility and

merits of the communication. The Committee notes that this information has not been received and that the State party has not provided any information as to the process of consultations mentioned in its note verbale of 21 May 2015. The Committee regrets the State party's failure to provide any information with regard to admissibility or the substance of the author's claims. It recalls that article 4(2) of the Optional Protocol obliges States parties to examine in good faith all allegations brought against them, and to make available to the Committee all information at their disposal.¹⁵ In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that they are substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

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

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

5.3 The Committee takes note of the author's allegations that the State party violated his rights under article 14(1) and (2) of the Covenant since his detention was based on false information and that the courts failed to act independently and impartially. The Committee, however, observes that the author has failed to explain the reasons why he considered that courts lacked independence and impartiality in the particular circumstances of his case. Likewise, the author has failed to explain how his right to be presumed innocent was violated by the State party's authorities. Accordingly, the Committee considers that the author has failed to sufficiently substantiate his claims of violation of article 14 (1) and (2) of the Covenant, and that those allegations are therefore inadmissible under article 2 of the Optional Protocol.

5.4 The Committee takes note of the author's allegations that there were no available domestic remedies for him to exhaust at the time his rights were violated, and that those that currently exist are to be considered non-effective (see 2.16-2.17 above). He claims that although there are some domestic remedies available in Sri Lanka, such as the fundamental right application to the Supreme Court against the State and/or particular State officials, in a context of impunity of human rights violations and lack of independence of the Judiciary - as stated in country reports by international organizations and well-known NGOs-, they had no and have no reasonable prospect of success, as illustrated by cases with similar facts that were brought to the Sri Lankan courts, with low probability of success. Against this background, the author submits that, in practice, these remedies are not effective. In the light of all information made available to the Committee, and in absence of State party's observations refuting the author's assertions, the Committee considers that there are no obstacles to the admissibility of the communication under article 5(2)(b) of the Optional Protocol.

5.5 As all admissibility requirements have been met, the Committee declares the communication admissible insofar as it raises issues under articles 7, 9, 10 and 14(3)(g) of the Covenant and proceeds to its consideration of the merits.

¹⁵ See also the Committee's Concluding observations on the fifth periodic report of Sri Lanka, CCPR/C/LKA/CO/5, 21 November 2014, para 6.

Consideration of merits

6.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

6.2 The Committee takes note of the author's allegations that he was subjected to severe ill-treatment and threats by State's agents while in detention, and that he was forced to sign a confession; that the authorities threatened to kill him; that on 17 December 2007, the author was beaten by TID officials; that the following morning officer in charge of the TID's facilities warned him that the beatings would not happen anymore once he signed a confession; and that he was forced to witness acts of torture against other inmates. Notably, in July 2008, while being detained in the TID's facilities in Colombo, he was pressured to confess to being a member of the LTTE's international intelligence wing; that the interrogators threatened to arrest his wife, rape her and kill his child if he refused to confess, and that in early August 2008, the interrogators told him that they would get a detention order against his wife; that against this background, he was forced to write a statement which stated that he had imported an illegal GPS device for the LTTE; and that subsequently he was brought before a court and charged with illegally importing a GPS device and aiding and abetting the LTTE. The Committee further notes the author's allegations that after he was taken to the TID's facility in Colombo, he was not provided with medication for diabetes until the first time he was visited by the HCC; that due to the lack of medication, he had to urinate very frequently but the guards did not always allow him to use the washroom, and occasionally he had no choice but to urinate in the clothes he was wearing and to stay in those clothes. Likewise, at the Welikada Prison, the guards refused to provide the author with his diabetes medication; he also experienced joint and chest pains, but was only taken to a hospital after the HCC sent a letter to the Commissioner of Prisons on 2 March 2010 (see footnote 4); although the hospital doctor indicated that the author needed to be admitted, he was returned to the prison, where he never received the medication prescribed by the doctor. In the absence of a response from the State party in this regard, the Committee gives due weight to the author's claims and finds a violation of his rights under article 7 of the Covenant.

6.3 In view of that above finding, the Committee considers that, in the circumstances of the present case, the State party also violated the author's rights under article 14(3)(g).

6.4 The Committee notes the author's allegations that on 14 September 2007, the TID officers did not inform him of the reasons for his arrest; that he was not detained on lawful grounds; that he was not given the opportunity to challenge the lawfulness of his detention; that he was brought to a judge after one year of being detained, in or about September 2008; and that during this period he was held in detention without charges. In the absence of a response from the State party in this regard, the Committee considers that the State party violated the author's rights under article 9 of the Covenant.

6.5 The Committee takes note of the author's allegations that he was subjected to general conditions of detention which constituted a violation of article 10 of the Covenant (see 2.5, 2.9 and 2.13 above).¹⁶In the absence of a rebuttal or clarification on the part of the State party, the Committee finds a violation by the State party of article 10 of the Covenant.

¹⁶ On the conditions of detention in the TID's facilities, see Report of the UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. Mission to Sri Lanka, A/HRC/7/3/Add.6, 26 February 2008, pp. 28-29.

7. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under articles 7, 9, 10 and 14(3)(g) of the Covenant, by the State party.

8. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to: (a) conduct a thorough and effective investigation into the facts submitted by the author; (b) prosecute, try and punish those responsible for the author's arbitrary arrest, ill-treatment, and inhuman detention, and make the results of such measures public; and (c) provide adequate compensation and appropriate measures of satisfaction, to the author for the violation suffered. The State party is also under an obligation to take all necessary steps to prevent similar violations in the future. In particular, the State party should ensure that: i) its legislation comply with the provisions of the Covenant; and ii) the burden of proving that a confession has not been obtained under torture or other ill-treatment rests with the prosecution in proceedings against the alleged victim.

9. 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 of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure for all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when 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 present Views and disseminate them widely in the official languages of the State party.
