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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 of the Terrorist Investigation Division while in detention
<i>Procedural issues:</i>	Non-cooperation of State party; 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; fair trial

* 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, Ahmed Amin Fathalla, Olivier de Frouville, Yuji Iwasawa, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez Rescia, Fabián Omar Salvioli, Dheerujall Seetulsingh, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.



Articles of the Covenant: 7, 9, 10 and 14

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 Covenant. The Optional Protocol to the Covenant entered into force for Sri Lanka on 3 January 1998. The author is represented by counsel.

The facts as submitted 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 a 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 into Sri Lanka, which were delivered to the author's house, to wait for the friend to pick them up the next day. On 14 September 2007 at night, plainclothes officers arrived at the author's home, armed with machine guns. They identified themselves as being part of the Terrorist Investigation Division 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 Global Positioning System (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 Terrorist Investigation Division detention facility in downtown Colombo. The officers who took him to the facility threatened to kill him. His pregnant wife and their child were placed under house arrest, guarded by officers of the Division. They were not permitted to contact anyone. However, his wife managed to contact her family and the High Commission of Canada 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 detention facility. The author claims that the officer in charge of the detention facility informed the author that it was illegal to possess a GPS device and questioned him for a period of 10 to 15 minutes. The officer accused the author of being a member of the Liberation Tigers of Tamil Eelam (LTTE) and told him that they had evidence to that effect. Later he was also accused of operating the intelligence wing of LTTE in Toronto, Canada.

2.3 The author was detained at the detention 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) Regulations. According to the order, the Ministry of Defence authorities were of the opinion that such a 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 LTTE.

2.4 Within a few days of his arrest, the author was visited by an official from the Department of Foreign Affairs and International Trade of Canada and a local staff member of the High Commission. The meeting took place in the office of the Officer-in-Charge, who was present, and lasted 10–15 minutes. The author told the Canadian officials that he did not know the reasons for his arrest and asked them to look into the situation of his wife and daughter. He also told them that he was diabetic and that he had been without medication since his arrest.

2.5 The author claims that in the detention facility he was kept separated from other 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 lie on the floor in an uncomfortable position, without a pillow or mattress. He was also forced to sleep among cockroaches and rats and in tight 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 a day. He was not provided with medication for his diabetes until the first time he was visited by officials from the High Commission, 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 meant 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 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 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 10-15 minutes in the presence of guards. During the months the author was detained at the facility, he was not brought before a judge or other judicial officer. The lawfulness of his detention was never reviewed and he was not permitted to see a lawyer.

2.7 In October 2007, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment visited the detention centre twice. The Special Rapporteur later reported accounts of torture and ill-treatment collected during his visit.¹ On 19 October 2007, the author met delegates from the International Committee of the Red Cross (ICRC), who were visiting the detention facility. They provided him with a registration card.² The author explained that he had nothing to sleep on and as a result of ICRC intervention, he was given a thin mattress around December 2007.

2.8 On the evening of 17 December 2007 the second-in command of the detention facility 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 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 the beating. The following morning, the officer-in-charge warned him not to tell ICRC about the beating that he had received. He then warned the author that such beatings would not happen again once he signed a confession. If he refused to sign the confession, the Terrorist Investigation Division would arrest his wife and child and detain them in the

¹ The author refers to the report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka (31 March 2011).

² The author provides a copy of a "detention attestation" issued by ICRC on 4 March 2011, which states that the author was visited for the first time by ICRC delegates in the Terrorist Investigation Division detention facility, Colombo District, on 19 October 2007; that between 6 November 2007 and 10 August 2009, he was visited in the Boosa detention centre (Galle District) and Welikada prison (Colombo District); and that according to the authorities, he was released on 27 August 2010 from Welikada prison.

detention centre. The author requested access to a lawyer, without success. He 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. On 1 May 2008, the Additional Secretary of the Ministry of Defence ordered that the author be detained there for 90 days. The author submits that at the Boosa detention 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 having the same brutal treatment inflicted on him. In April or May 2008, the author was visited by an official of the Canadian High Commission. The author told the official about the events he had lived through and witnessed at the Boosa detention 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 Terrorist Investigation Division detention facility in Colombo. He claims that he was pressured to confess to being a member of the international intelligence wing of LTTE. 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 to the effect that he had imported an illegal GPS device for LTTE. He was then sent back to the Boosa detention 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, he submitted 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 had 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 South-East Asia; that he was a member of the LTTE intelligence wing and had a close relationship with the rebel intelligence chief 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 that report, the magistrate authorized the author's continued detention and transfer to Welikada prison.

2.12 On or about 4 November 2008, 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 had failed to alert the Sri Lankan authorities to this situation. On approximately 13 October 2009, the author appeared at High Court No. 1 (which dealt with the Prevention of Terrorism Act) and was formally charged with illegally importing a GPS device and aiding and abetting LTTE.

2.13 While in detention at Welikada prison, the author was twice visited by ICRC delegates and also by staff of the Canadian High Commission. He claims that he was kept in maximum security detention, alongside convicted murderers. The guards treated him even more harshly and refused to provide him with his diabetes medication. At that time, the author began experiencing joint and chest pains. On 2 March 2010, the High Commission 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.³ The author 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 prison. The doctor wrote a note

³ The author provides a copy of a facsimile from the High Commission of Canada addressed to the Superintendent of Prisons in Colombo on 2 March 2010.

prescribing medication for the chest pains and gave it to the escort guard for the prison hospital. However, the author never received any medication for chest pains.

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 an unspecified date, the author requested his lawyer to do something to resolve the situation. The lawyer talked to the Department of the Attorney General, with which he negotiated an agreement. He was eventually able to reach an agreement with the prosecutor to drop all the charges, except the one regarding possession of a GPS device. Believing he had no other choice, he agreed to plead guilty to that 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 Government of Sri Lanka refused to give 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, his wife and children reside in Toronto. However, he continues to suffer the physical and psychological consequences of the events he experienced in Sri Lanka. In that 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 to take painkillers; that he has been treated for depression and diagnosed with post-traumatic stress disorder. As a result of his suffering and his 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 the 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,⁴ he was unable to file an application before ordinary courts. That made it impossible for him to pursue any remedies. The Public Security Ordinance 1947 and the Prevention of Terrorism Act gave State officials immunity, which prevented the author from pursuing a civil action against the State party and the officials responsible for his detention and torture. Likewise, the Code of Criminal Procedure, Act No. 15 of 1979 (as amended), provided State officials with immunity from being sued for actions taken in good faith in the discharge of their duties. In any event, even if civil action against the State and/or the individuals involved had been 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 would have been possible to bring a fundamental rights application before the Supreme Court or make representations to the Attorney General in an attempt to have a law declared ultra vires, or encourage prosecution of public officials. However, none of those alternatives constituted an effective remedy since the judicial system was not independent and impartial in Sri Lanka. Other individuals who have brought fundamental rights applications before the Supreme Court have been unsuccessful for a variety of different reasons, or because the applications remained pending after several months or years.⁵ In addition, the Attorney General was not impartial and often refused to take action on complaints brought by individuals who alleged violations of their fundamental rights, or

⁴ The author refers to two reports of the International Commission of Jurists, "Authority without accountability: the crisis of impunity in Sri Lanka" (November 2012), pp. 31 and 37; and "Beyond lawful constraints: Sri Lanka's mass detention of LTTE suspects" (September 2010), pp. 6 and 13.

⁵ The author refers to *Edward Sivalingam v. Jayasekara*, S.C. (F/R) application No. 326/2008, decided on 10 November 2011 (Supreme Court of Sri Lanka), and *Sri Lanka v. Makavitage, Suresh, Gunasena and others*, case No. HC 326/2003 (Negombo High Court).

obstructed the proceedings. In that 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, owing to the politicization of the Attorney General's office. The author claims that he would not have been permitted to bring an application for judicial review of the Emergency Regulations in light of Public Security Ordinance 1947 and regulation 19 (10) of the Emergency Regulations 2005 to the Supreme Court since regulation 19 (10) states that any administrative detention order made under the Emergency Regulations "shall not be called in question in any court on any ground whatsoever".

2.17 Upon release from detention, the author felt that there was no reasonable prospect of success in attempting to overturn his conviction after experiencing the unfair practices of the legal system.⁶ In that connection, he submits that several cases similar to his were brought before the Sri Lankan 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, has profoundly affected the fairness of the criminal justice system.⁷ 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 had experienced during his detention, as well as the reaction of the authorities 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.⁸ In that context, the judiciary lacks independence, leaving victims, in particular persons of Tamil origin, with little or no prospect of remedies or reparations for serious human rights violations.⁹ 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 the country. Against that 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 as set forth in articles 7, 9, 10 and 14 of the Covenant.

3.2 As background information, the author submits that in the context of the armed conflict between the Sri Lankan security forces and LTTE, since 2005 the authorities have increased military and police operations, in which Tamils have frequently been 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 2009.¹⁰ During those years,

⁶ The author refers to communications No. 1293/2004, *de Dios Prieto v. Spain*, decision of inadmissibility adopted on 25 July 2006, para. 6.3, and No. 1313/2004, *Castano López v. Spain*, decision of inadmissibility adopted on 25 July 2006, para. 6.3.

⁷ The author refers to the report of the Panel of Experts on accountability in Sri Lanka, pp. ii-iii and para. 320.

⁸ *Ibid.*, pp. 100-101.

⁹ The author refers to "Authority without accountability: the crisis of impunity in Sri Lanka", pp. 12, 39, 55, 72, 111 and 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).

¹⁰ The author refers to the report of the Panel of Experts on Accountability in Sri Lanka pp. ii-iii and 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

torture was widely practised in Sri Lanka,¹¹ especially in the context of counter-terrorism operations by the armed forces and the police, including the Terrorist Investigation Division.¹² He further claims that the Division was implicated in numerous instances of mistreatment and torture. Persons held in their detention facilities were often held incommunicado and denied visits from family members, lawyers and human rights groups.¹³

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 treatment at the hands of Terrorist Investigation Division officials and guards that was contrary to the provisions of article 7 of the Covenant. In particular, in August 2008, he was interrogated for several hours and forced to sign a false confession under conditions of torture, in which he stated that he had imported an illegal GPS device for LTTE. The author alleges that all the events he experienced individually and collectively constitute torture. Should the Committee disagree with that 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 officers of the Terrorist Investigation Division who arrested him did not inform him of any discernible reason for his arrest. He never appeared before a magistrate and 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 magistrate, which took place 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 of the Covenant, the conditions at the different centres in which he was held constituted a violation of his rights under article 10, as well as numerous provisions of the United Nations Standard Minimum Rules for the Treatment of Prisoners. He points out that while in detention, he was denied medication for treatment of his diabetes for some time and officials at Welikada prison did not provide him with medication for chest pains, despite a doctor's prescription and

Watch (HRW), *Return to War* (6 August 2007).

¹¹ See A/HRC/7/3/Add.6, pp. 7, 19, 20, 23, 25, 28-34 and 46-50; Human Rights Watch, "Legal limbo: the uncertain fate of detained LTTE suspects in Sri Lanka" (February 2010), pp. 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* (Hong Kong, China, 2009), pp. 42-44 and 158.

¹² The author claims that the Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 2005, Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities Regulations) No. 7 of 2006 and the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 regulate the operations of the Sri Lankan army and the police, including the Terrorist Investigation Division. The author submits that the Prevention of Terrorism Act, 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; has a vague and far-reaching definition of "unlawful activities"; allows for the impunity of officials who commit torture against persons detained under that legislation and for involuntary and forced confessions made in police custody to be submitted as evidence in court; reverses the burden of proof such that the detainee must prove that their confession was made under duress; and that detainees arrested under the Act and/or the Emergency Regulations were routinely denied due process and held arbitrarily without being charged.

¹³ The author refers to A/HRC/7/3/Add.6, pp. 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, "Locked away: Sri Lanka's security detainees" (2012), pp. 10-14; Human Rights Watch, "Sri Lanka: 'bait and switch' on emergency law" (7 September 2011) and "'We will teach you a lesson': sexual violence against Tamils by Sri Lankan security forces" (February 2013); and Asian Human Rights Commission, *Police torture cases in Sri Lanka: 1998-2011* (2012).

instructions to do so. He was also forced to sleep on the ground among cockroaches and rats in tight handcuffs, all the while chained to a desk. At the Boosa detention centre he was kept in solitary confinement and 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 conditions of torture. The conduct of the court proceedings also violated his rights to a fair trial, because the court did not act independently or impartially and failed to investigate the ill-treatment inflicted on the author. Furthermore, 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 under section 16 (2) of the Prevention of Terrorism Act, forced confessions were 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, inter alia, to: (a) acknowledge its breaches of the Covenant; (b) carry out an investigation into the violations suffered by him and take disciplinary and criminal action against the perpetrators; (c) provide him with compensation for the harm suffered by him and his family as a result of the violations committed and for other assessable damages; (d) provide assurance or guarantees of non-repetition; and (e) take the necessary legislative measures to give effect to the rights 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 the judgment of the Supreme Court of Sri Lanka in the case of *Nallaratnam Singarasa v. Attorney General* of 15 September 2006, in which the Supreme Court stated that by acceding to the Optional Protocol, the Government of Sri Lanka had violated the provisions of the Constitution and that only courts and tribunals set up under the Constitution could adjudicate on the rights of the people of Sri Lanka. The State party stated 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 had initiated a process of consultations, taking into account the views of the Committee and the United Nations High Commissioner for Human Rights on the possibility of reviewing the decision of the Supreme Court mentioned above; and that a response pertaining to the communication would be submitted following that 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.¹⁴ 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 Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

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

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 considers that the 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 authorities of the State party. 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 paras. 2.16 and 2.17 above). He claims that although there are some domestic remedies available in Sri Lanka, such as the fundamental right of an application to the Supreme Court against the State and/or particular State officials, in a context of impunity of human rights violations and the lack of independence of the judiciary, as stated in reports by international organizations and well-known non-governmental organizations, they had and have no reasonable prospect of success, as illustrated by cases with similar facts that have been brought before the Sri Lankan courts. Against that background, the author submits that, in practice, those remedies are not effective. In the light of all the information made available to the Committee and in the absence of the 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 with its consideration of the merits.

Consideration of the merits

6.1 The 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 agents while in detention and that he was forced to sign a

¹⁴ See also CCPR/C/LKA/CO/5, para. 6.

confession; that the authorities threatened to kill him; that on 17 December 2007, the author was beaten by officials of the Terrorist Investigation Division; that the following morning the officer in charge of the detention facility of the Terrorist Investigation Division warned him that the beatings would cease 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 Terrorist Investigation Division facility in Colombo, he was pressured to confess to being a member of the international intelligence wing of LTTE; 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 in which he stated that he had imported an illegal GPS device for LTTE; and that subsequently he was brought before a court and charged with illegally importing a GPS device and aiding and abetting LTTE. The Committee further notes the author's allegations that after he was taken to the detention facility in Colombo, he was not provided with medication for his diabetes until the first time he was visited by a representative of the High Commission of Canada; that owing 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 High Commission sent a letter to the Superintendent of Prisons in Colombo on 2 March 2010 and, although the hospital doctor had 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 that 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 finding, the Committee considers that, in the circumstances of the present case, the State party has 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 officers of the Terrorist Investigation Division 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 only brought before a judge after one year of being detained, in or around September 2008; and that during that period he was held in detention without charge. In the absence of a response from the State party in that regard, the Committee considers that the State party has 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 paras. 2.5, 2.9 and 2.13 above).¹⁵ In 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.

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

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

¹⁵ On the conditions of detention in the facilities of the Terrorist Investigation Division, see A/HRC/7/3/Add.6, pp. 28-29.

author's arbitrary arrest, ill-treatment and inhumane detention, and make the results of such measures public; and (c) provide adequate compensation and appropriate measures of satisfaction to the author for the violations suffered. The State party is also under an obligation to take steps to prevent similar violations in the future. In particular, the State party should ensure that: (a) its legislation complies with the provisions of the Covenant; and (b) 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 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 when it has been determined that a violation has occurred, 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 to have them widely disseminated in the official languages of the State party.
