



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under the Optional Protocol, concerning communication No. 2508/2014^{*,**}

<i>Communication submitted by:</i>	Dodanpegamage Asantha Aravinda (represented by counsels, Sarah Fulton ¹ and Alejandra Vicente of Redress Trust)
<i>Alleged victims:</i>	The author
<i>State party:</i>	Sri Lanka
<i>Date of communication:</i>	31 October 2011 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 16 December 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	2 July 2021
<i>Subject matter:</i>	Failure to properly investigate, prosecute and ensure redress for the alleged arbitrary detention and torture of the victim by a private person and police officers
<i>Procedural issues:</i>	State party's failure to cooperate; exhaustion of domestic remedies; lack of substantiation
<i>Substantive issues:</i>	Cruel, inhuman or degrading treatment or punishment; arbitrary detention; discrimination on the ground of other status; effective remedy
<i>Articles of the Covenant:</i>	7, 9 and 26 read alone and in conjunction with article 2 (3)
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

* Adopted by the Committee at its 132nd session (28 June–23 July 2021).

** The following members of the Committee participated in the examination of the communication:
Tania Abdo Rocholl, Yadh Ben Achour, Arif Bulkan, Wafaa Ashraf Moharram, Mahjoub El Haiba,
Furuya Shuichi, Kobayyah Tchamdja Kpatcha, Duncan Laki Muhumuza, Carlos Gomez Martinez,
Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Changrok Soh,
Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

¹ Former counsel.

1. The author of the communication is Dodanpegamage Asantha Aravinda, national of Sri Lanka born in 1985. He claims that the State party has violated his rights under articles 7, 9 and 26 read alone and in conjunction with article 2 (3) of the Covenant. The Optional Protocol entered into force for Sri Lanka on 3 January 1998. The author is represented by counsels.

Facts as submitted by the author

2.1 On 28 February 2008, the author' and his friend's motorbike almost collided with a truck driven by Mr P.V.Ch who was crossing the road without checking for oncoming traffic. After this incident there was some exchange of words between the parties and the author and his friend drove away. However, shortly thereafter, the truck's driver followed them from behind and struck the motorbike leaving both the author and his friend severely injured. Subsequently, a vehicle approached the scene and the truck's driver who had previously fled the scene got out of that car along with some officers of the Pitabaddara police station. The police officers tied the author's and his friend's hands and they were beaten up by the officers and Mr. P.V.Ch. The driver then poured acid onto the author's face that caused him severe pain and left one of his eyes badly injured.

2.2 Subsequently, the author and his friend were taken to the Pitabaddara police station. They were physically assaulted by policemen and then locked up in a cell. Close to midnight, Mr P.V.Ch. appeared at the police station and beat up the author in his cell and poured liquor on his burns. Due to the unbearable pain, the author lost consciousness. When he came to his senses, he was threatened and forced to sign blank documents by the officers.

2.3 The author's father was informed about his son's detention on the same day; however, he was not allowed to see the author in spite of the family's repeated requests and visits to the police station between 29 February and 1 March 2008. The officials informed them that the author and his friend had been assaulted by local people and during the incident the author was burned with acid and that policemen had discovered that the author's friend had a firearm.

2.4 On 1 March 2008, the author and his friend were forced to show their injuries to a group of cameramen and journalists outside of the police station. The author was not hospitalized until around 8 p.m. on the same day despite his repeated requests and those of his parents to that effect. While on route to the hospital, two policemen threatened the author and his friend not to tell the medical staff about their ill-treatment.

2.5 While hospitalized, the officer-in-charge of the Pitabaddara police station, Mr. K. falsified charges against the author and his friend in the Magistrate Court of Morawaka for possession of a firearm and a hand grenade. The officer-in-charge argued that the author attempted to murder Mr. P.V.Ch with a gun and that during his arrest many people gathered at the scene and an unidentified passer-by threw acid on the author. At the time of the submission of the complaint, these cases were still pending. Other fabricated charges against the author for robbery have been dismissed by the Magistrate Court.

2.6 On 5 March 2008, the author was transferred to the Prison's hospital. The author's sight deteriorated and eventually, he went blind in his damaged eye. The author notes that he was not examined by a forensic medical officer until 6 March 2008. On 2 April 2008, he was transferred to Colombo Eye Hospital where he had 6 surgeries between 15 April and 16 December 2008. He is still treated as an out-patient and has permanent blindness in one of his eyes as a result of ill-treatment inflicted by Mr P.V.Ch. and the police officers.

2.7 Immediately after the events, the author's father submitted several complaints about the unlawful detention and torture of his son by the police officers at Pitabaddara police station. Notably, on 27 March 2008, he submitted a complaint to the Senior Superintendent of Police of Matara and the regional office of the Human Rights Commission of Sri Lanka in Matara. Several days later, he filed complaints with the Inspector General of Police and the Deputy Inspector General of Police of the Southern Province, the National Police Commission and the head office of the Human Rights Commission of Sri Lanka in Colombo. Since no action was taken, he also instructed a lawyer to submit a written complaint to the Assistant Superintendent of Police requesting to conduct immediate inquiries into the events.

2.8 On 23 August 2008, the Deputy Inspector General of Police brought a report to the National Police Commission and recommended that disciplinary and criminal actions should be taken against policemen of the Pitabaddara police station for misbehaviour and violations of the author's human rights, under the Penal Code and under Act 22 of 1994 on Torture. In parallel, criminal charges were brought against Mr P.V.Ch. for pouring acid onto the author's face. Although he was initially detained; he was later released on the condition of signing two personal bonds and was never tried in court.

2.9 On 27 February 2009, the Human Rights Commission of Sri Lanka published its final recommendations on the matter. It held that the failure of the officer-in-charge and the other police officers to take legal action against Mr. P.V.Ch. amounted to a violation of article 12 (1) of Sri Lanka's Constitution, which provides that all persons are equal before the law and are entitled to the equal protection of the law. The Human Rights Commission of Sri Lanka recommended that compensation be paid in the amount of 5000 Sri Lankan rupees (approximately 50 US dollars) and in order to obtain such compensation the author is to file a claim for damages in a court of law. The decision did not address, however, the author's allegations of torture by the police officers, his arbitrary arrest and the fabricated charges brought against him.

2.10 In addition, in February 2009, the author's father submitted, on behalf of his son, a constitutional complaint to the Supreme Court under article 126 of the Sri Lankan Constitution claiming violations of articles 11, 12 (1), 13 (1) and (2) of the Sri Lankan Constitution.

2.11 On an unspecified date in 2009, the author also submitted an action for compensation in the Morawaka District Court.

2.12 On 15 July 2020, the author provided up-to-date information about the status of the domestic proceedings and informed the Committee that there were two criminal cases launched against the police officers under the Act on Torture before the Matara High Court. Both cases were referred to the Attorney General for advice on 21 May 2019, however, his instructions have not been received yet. Therefore, the cases are still pending more than thirteen years after the events took place.

2.13 The author further informed the Committee that on 2 August 2016, the Supreme Court delivered its judgment finding that the Pitabaddara police station's failure to seek immediate medical attention for the author, who had been severely injured, constituted cruel, inhuman and degrading treatment. The Supreme Court considered that this was the sole responsibility of the then officer-in-charge of the police station, the late Mr. K., who was also found responsible for not having guaranteed the author's right to equal protection of the law. The Supreme Court held that the liability of other police officers who were only following the orders of Mr. K. could not be established. The Supreme Court awarded the author compensation in the amount of 200000 Sri Lankan rupees (approximately 1075 US dollars) that was paid him.

2.14 Furthermore, the author informed that his civil compensation claim is still pending before the Morawaka District Court.

Complaint

3.1 The author claims that his rights under articles 7, 9 and 26 taken alone and in conjunction with article 2 (3) of the Covenant have been violated by the State party by failing to conduct effective investigation into his torture claim and arbitrary detention and to bring perpetrators to justice.

3.2 The author submits that he was severely beaten and tortured in other forms during his arrest and detention, by and with the knowledge of police officers of the Pitabaddara police station, in breach of article 7 of the Covenant. In this respect, he argues that the State party not only violated its negative obligation under this provision, namely, not to subject the author to torture by State actors, but also failed to respect its positive obligations including the obligation to protect detainees from violence inflicted by private actors. In addition, he was not provided with prompt and adequate medical care in spite of his repeated requests as a result of which he endured severe pain and sustained permanent bodily injuries.

3.3 He alleges that his arrest was arbitrary under article 9 (1) and (2) of the Covenant since there was no lawful basis for his detention and he was not informed immediately of the reasons for his arrest. He notes that he only learnt that he had been accused of possessing a firearm and a hand grenade when he was transferred to the Matara hospital on 1 March 2008. Furthermore, he was not brought promptly before a court and his counsel was not provided with the records of his case until 1 March 2008. He argues that in practice, he was deprived of his right to have the lawfulness of his detention reviewed by a court in violation of article 9 (4) of the Covenant.

3.4 The author claims that his ill-treatment in police custody constituted unlawful differential treatment in breach of article 26 of the Covenant. In this respect, he argues that detainees are more likely to be subjected to torture with impunity than any other group of persons and that there is no reasonable and objective justification for such inequality, which amounts to discrimination on the basis of his prisoner status.

3.5 Lastly, the author argues that the State party has failed to provide a prompt, independent and impartial investigation into his allegations of torture and that perpetrators were not brought to justice, which constitutes a violation of articles 2 (3) in conjunction with articles 7, 9 and 26 of the Covenant. He holds that domestic procedures are unreasonably long and ineffective. The two criminal cases launched under the Act on Torture against the police officers are awaiting the determination of the Attorney General even more than thirteen years after the events. He claims that the widespread practice of non-prosecution or selective prosecution of perpetrators of torture is contrary to the absolute prohibition of torture, the obligation of the State party to investigate such complaints and breaches the principle of equality before law. He further argues that he fears to take any other legal action against the police since the officers implicated in the events remained in their positions.²

3.6 In his submission dated 15 July 2020, the author maintained his position that the violation of his rights remains in impunity. He argues that despite the decisions issued by the Supreme Court and the Human Rights Commission of Sri Lanka in favour of some aspects of his case, the findings of facts were narrow, the responsibility established of those involved in the events was limited in scope, and the compensation awarded did not take into account the seriousness of the violation of his rights. Although the Supreme Court's ruling recognized that the lack of medical assistance to the author while in police custody had constituted torture and inhuman treatment, the Court did not address the author's arbitrary arrest and other forms of violence he had been subjected to. Furthermore, the Supreme Court failed to order the competent authorities to bring perpetrators to justice in line with article 2 (3) of the Covenant. The only person who had been found responsible for the violation of the author's rights is deceased, and no one has been convicted of any crime in criminal proceedings. The author further submits that his case is not an isolated one because the culture of impunity is directly attributable to the entire criminal justice system of the State party. Sri Lanka's Attorney General and the judiciary are reluctant to investigate and prosecute allegations of torture, the competent authorities lack independence. Furthermore, those who pursue their claims may be subjected to acts of reprisals. The author argues that the measures taken so far to combat impunity are insufficient.³ The author further submits that according to the findings of the Committee Against Torture only 17 cases of torture have been filed under the Convention against Torture Act since 2012 and only 2 have resulted in convictions, suggesting that only a small number of allegations of torture have actually been investigated. The Committee noted with concern the considerable discrepancy between the low number of complaints of torture reportedly received by the police since 2012 (150 cases) and the high number of

² The author claims that because of his previous complaints he had been detained unlawfully and accused of false charges in 2011 and 2012. Four out of six fabricated charges have already been dismissed by courts. The communication does not provide further details in this regard.

³ The author refers to the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his Mission to Sri Lanka (A/HRC/34/54/Add.2) and the Report of the Special Rapporteur on the Independence of Judges and Lawyers on Her Mission to Sri Lanka (A/HRC/35/31/Add.1).

allegations of torture received by the Human Rights Commission of Sri Lanka during the same period (2,259 cases).⁴

3.7 The author further claims that he had to endure significant physical and mental suffering as a result of the ill-treatment inflicted upon him by the Sri Lankan authorities that continues to this day. He informs that his eye had to be removed and this fact has a significant impact on his employment opportunities.

3.8 In terms of the remedies sought, the author invites the Committee to order the State party to bring perpetrators to justice and issue a public apology, to provide him with adequate compensation for his pecuniary and non-pecuniary damages and to ensure that he has access to full rehabilitation, including psychological counselling.

Lack of cooperation from the State party

4. By notes verbales of 16 December 2014, 22 December 2015, 23 May 2016, 17 July 2018 and 23 July 2020 the State party was 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. 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. It recalls that in the absence of a reply from the State party, due weight must be given to the authors' 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 97 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 In the absence of any submission by the State party on the admissibility of the communication, and noting the author's statement that domestic remedies have proven to be ineffective or unduly prolonged, the Committee considers that it is not precluded from considering the communication under article 5 (2) (b) of the Optional Protocol.

5.4 The Committee takes note of the author's allegations that the State party violated his right under article 26 of the Covenant, since, as a detainee, he had been subjected to torture with impunity, which is more likely to occur in case of prisoners than any other group of persons and that there is no reasonable and objective justification for such differential treatment. The Committee considers, however, that the author failed to produce an actual comparator, i.e. a person in a comparable situation, for the purposes of establishing a prima facie case. In this respect, the Committee considers that it is not possible to establish a comparison of treatment between persons in detention and persons who are not in detention since they are not in similar situation. Accordingly, the Committee considers that the author has failed to sufficiently substantiate his claims under article 26 of the Covenant and declares that his allegations are inadmissible under article 2 of the Optional Protocol.

5.5 The Committee considers that the author's allegations under articles 7 and 9 taken alone and in conjunction with article 2 (3) of the Covenant, have been sufficiently substantiated for the purposes of admissibility and proceeds with their consideration on the merits.

⁴ The author refers to the Concluding Observations on the Fifth Periodic Report of Sri Lanka of the Committee against Torture (CAT/C/LKA/CO/5) para. 19.

Consideration of the merits

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

6.2 Regarding the author's claims under article 7 of the Covenant, the Committee takes note of the events that took place on 28 February 2008 when the author's motorbike was struck by a truck driven by Mr. P.V.Ch. In particular, the Committee notes the author's statements that in addition to the injuries he suffered as a result of the accident, he was severely beaten up at the scene by some police officers and the truck driver who even threw a cup of acid into the author's face. The Committee observes that instead of providing him with prompt and adequate medical treatment required by his critical medical condition, the author was placed in detention in which he remained until the evening of 1 March 2008. During this period he was again ill-treated by police officers and the truck driver who reappeared at the police station. The Committee is mindful of the author's submission that as a result of his ill-treatment and late medical intervention, his eye had to be operated on multiple times and eventually, it had to be removed. His condition continues to cause him physical and mental suffering and further difficulties in some areas of his life, such as employment.

6.3 The Committee recalls its General Comment no. 20 on the Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment establishing that it is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity (para. 2). Furthermore, in line with its jurisprudence, the Committee reaffirms its position that the burden of proof cannot rest solely on the author of the communication, especially considering that the State party alone has access to some of the relevant information.⁵ In the absence of any rebuttal statements or any comments from the State party on the above-mentioned facts, the Committee gives due weight to the author's contentions that have also been confirmed by findings of the national authorities⁶. The Committee considers that the torture and conditions described, notably the use of acid and beatings inflicted by the truck driver; the police's failure to protect the author while in their control and to seek prompt medical assistance; and the author's further physical abuse by police officers during his detention, which have caused him severe pain and permanent disability, are such as to violate the author's right not to be subjected to cruel, inhuman or degrading treatment under article 7 of the Covenant.

6.4 The Committee also notes the author's allegations that the State party could not demonstrate that his arrest had been "reasonable" or "necessary" in the circumstances of his case. It also notes that according to the information at its disposal, the author was never convicted for the charges, fabricated or not, brought against him. In the absence of a clarification on the part of the State party as to the grounds of the author's detention from 28 February to 1 March, the Committee finds a violation by the State party of the rights of the author under article 9 of the Covenant.⁷

6.5 The author also invokes article 2 (3) in conjunction with articles 7 and 9 of the Covenant, whereby all States parties have the obligation to ensure that any person whose rights under the Covenant are violated has an effective remedy. The Committee recalls that criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those protected by articles 6 and 7 of the Covenant.⁸ In the instant case, the Committee is concerned that more than thirteen years after the incident, no one has been brought to justice for the author's ill-treatment. In this connection, the Committee

⁵ See, for example, *Belamrانيا v. Algeria* (see note 20 above), para. 6.5; and communication No. 1832/2008, *Al Khazmi v. Libya*, Views adopted on 18 July 2013, para. 8.2.

⁶ Recommendations of the Human Rights Commission of Sri Lanka dated 27 February 2009 and the judgment of the Supreme Court of Sri Lanka dated 2 August 2016.

⁷ See, for example, *Amarasinghe Arachchige Simon Amarasinghe v. Sri Lanka* (CCPR/C/120/D/2209/2012), para 6.7.

⁸ See, for example, *Thissera Sunil Hemachandra v. Sri Lanka* (CCPR/C/113/D/2087/2011), para 6.3.

observes that even though two criminal cases related to the author's torture claims have been launched against the police officers involved in the events, which have been referred to the Attorney General for advice, both cases are still pending and the perpetrators remain in their positions. According to the information before the Committee, Mr. P.V. Ch. had not been tried by a court of law either and he later deceased. Furthermore, the Committee notes with concern that it took almost eight years for the Supreme Court to rule on the author's case. The Committee is mindful of the author's position that the Supreme Court's findings and those of the Human Rights Commission of Sri Lanka are incomplete as to the facts of his case, that they only establish a limited liability of one individual and that the compensation afforded to him does not correspond to the gravity of the violation of his rights. Lastly, the Committee observes that the author's action for damages filed with the District Court of Morawaka in 2009 has not yet come to an end. Having duly considered the above and in the absence of any explanation by the State party, the Committee concludes that the State party failed to investigate properly the author's detention and torture, to prosecute the perpetrators and ensure redress, thereby violating the author's rights under article 2 (3), read in conjunction with articles 7 and 9 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 and 9, read alone and in conjunction with article 2 (3) 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 provision requires that States parties make full reparation to individuals whose Covenant rights have been violated. In the present case, the State party is under the obligation, inter alia, to: (a) conduct a thorough, impartial, independent and effective investigation into the facts submitted by the author; (b) prosecute, try and punish those responsible for the author's arbitrary arrest and ill-treatment, 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.

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 language of the State party.
