



**International covenant  
on civil and political  
rights**

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HUMAN RIGHTS COMMITTEE  
Ninety-third session  
7 – 25 July 2008

**VIEWS**

**Communication No. 1436/2005**

<u>Submitted by:</u>	Mr. Vadivel Sathasivam and Mrs. Parathesi Saraswathi (represented by counsel, Mr. V.S. Ganesalingam and Interights)
<u>Alleged victims:</u>	The authors and their son, Mr. Sathasivam Sanjeevan
<u>State party:</u>	Sri Lanka
<u>Date of communication:</u>	15 September 2005 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 21 November 2005 (not issued in document form)
<u>Date of adoption of Views:</u>	8 July 2008

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

*Subject matter:* Mistreatment and death of prisoner while in police custody

*Substantive issues:* Arbitrary deprivation of life – torture and ill-treatment – adequacy of investigation – effectiveness of remedy

*Procedural issues:* Non-cooperation of State party

*Articles of the Covenant:* Article 2, paragraph 3; article 6 and article 7

*Articles of the Optional Protocol:* None

On 8 July 2008, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1436/2005.

[ANNEX]

**ANNEX**

Views of the Human Rights Committee under article 5, paragraph 4, of  
the Optional Protocol to the International Covenant on Civil and Political rights

Ninety-third session

concerning

**Communication No. 1436/2005\***

Submitted by: Mr. Vadivel Sathasivam and Mrs. Parathesi  
Saraswathi (represented by counsel, Mr. V.S.  
Ganesalingam and Interights)

Alleged victims: The authors and their son, Mr. Sathasivam  
Sanjeevan

State party: Sri Lanka

Date of communication: 15 September 2005 (initial submission)

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

Meeting on 8 July 2008,

Having concluded its consideration of communication No. 1436/2005, submitted to the  
Human Rights Committee on behalf of Mr. Vadivel Sathasivam, Mrs. Parathesi Saraswathi and  
their son Mr. Sathasivam Sanjeevan under the Optional Protocol to the International Covenant  
on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the  
communication, and the State party,

Adopts the following:

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\* The following members of the Committee participated in the examination of the present  
communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine  
Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Walter  
Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia  
Antoanella Motoc, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas  
Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

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

1. The authors of the communication are Vadivel Sathasivam and Parathesi Saraswathi, They submit the communication on their own behalf and on behalf of their son, Sathasivam Sanjeevan, deceased on or about 15 October 1998 at age 18. They claim to be victims of article 2, paragraph 3; article 6 and article 7 of the Covenant by the Democratic People's Republic of Sri Lanka ("Sri Lanka"). They are represented by counsel, V.S. Ganesalingam and Interights.

#### **The facts as submitted by the authors**

2.1 On 13 October 1998, the authors' son, Sathasivam, then aged 18, left their home in Kalmunai for an errand and did not return. The next day, around 9 a.m., the police informed the first author that his son had been arrested and was being detained at a police station. The first author was not provided with any reasons for the arrest. He went to the local (Kalmunai) police station, but, upon arrival, was denied access to his son. Around 4 p.m., he returned with a lawyer and was permitted to visit his son. His son was in poor physical condition, unable to walk and eat, his right ear swollen and oozing blood. His son informed him and the lawyer that upon his arrest by two police officers he had been thrown against a telephone post and further tortured and ill-treated.

2.2 On 15 October, the first author and his sister visited Sathasivam again at around 5pm. They were told that he had not been taken to hospital but treated by a doctor, which meant that no medical report of his condition and treatment existed. He was in an even worse condition, pleading for his release. Seated and unable to raise his hands, he recounted again that he had been thrown with force against a telephone post by two police officers, and as a result was unable to walk, eat or drink. The first author noticed swelling on the back of his neck, and blood oozing from both shoulders. Unable to stand by himself, he reiterated that his injuries resulted from assaults by police officers. The first author inquired of the police officer present how his son had been injured, but was informed that there would be an inquiry and that his son would be released subsequently. When the first author again visited his son on 15 October, his condition had deteriorated. He could not stand and could hardly talk, eat or drink. He could only indicate that he had been taken to a doctor the previous night and been given medicine.

2.3 On 16 October, the first author was denied access to his son. That evening, he received a message from the police station requesting that he proceed to Ampara hospital immediately. The following day, the first author went to Ampara and was shown his son's body at the mortuary. Stitches could be seen on his tongue and his body had been cut open from chest to stomach. The first author was informed that the postmortem and inquest had been completed and that he could therefore take the body, although it could not be removed from Ampara. Subsequently, he was allowed to take the body to Kalmunai for burial.

2.4 The first author subsequently learned that following filing of police notification, an inquest into his son's death had been conducted on 15 October by the Acting Magistrate of Kalmunai. The Acting Magistrate considered a report filed by the local Samamnathurai police, which stated that on 15 October, while the authors' son was being taken from Kalmunai to Ampara police station by eight police officers, the convoy was attacked around 9 p.m. by LTTE fighters. The report stated, without further substantiation, that two police officers and the first authors son

were wounded, with the vehicle sustaining damage. All three were admitted to Ampara hospital, where the son died and the two officers survived. The Magistrate ordered that an inquest and postmortem be performed with results sent to him by 21 October, in order to undertake a full inquiry.

2.5 On 16 October, the Acting Magistrate of Kalmunai held an inquest after visiting the scene of the alleged incident. His inquest report noted five bullet wounds in the body of the first author's son, but stated that there were no other injuries. While observing that a shooting incident had taken place, he did not conclude that an attack could have been carried out as described by the police. He ordered that a postmortem be carried out by the Ampara District Medical Officer, and that the body then be released to the next of kin.

2.6 The District Medical Officer carried out a postmortem later the same day. His report found injuries to the lower abdomen, bladder and right femur, as well as a fracture of the right pelvic bone. He concluded that the cause of death was shock following severe bleeding due to injuries caused by firearms. There was no mention of torture. The report did not state whether the fatal gunshot injuries were, or could have been, inflicted before or after the victim's death, although there was provision in the form to so indicate.

2.7 The Acting Magistrate did not receive the postmortem report by the date of the inquiry hearing on 21 October 1998, leading to postponements until 29 October and then to 12 November, and again to 26 November, to secure the attendance of Kalmunai police officers. The authors had not received notice of the inquiry and thus neither they nor their lawyer were present at the hearings of 21 and 29 October. Having heard independently about the 12 November hearing date they were represented from that point onwards.

2.8 The authors brought the case to the attention of the Kalmunai office of the Human Rights Commission, which transmitted the case to the Colombo head office. On 2 November 1998, the authors' counsel wrote to the Chairperson of the Commission, requesting action under sections 14 and 15 of the Human Rights Commission of Sri Lanka Act 1996 by (a) directing the Deputy Inspector General of Police for the Kalmunai region to order an investigation, and (b) bringing this action to the attention of the local Magistrate. The letter was not acknowledged, nor was any action taken.

2.9 At the Magisterial hearing on 26 November, the first author and his sister gave evidence of the nature and extent of torture inflicted on the son, based on what they had seen and been told by him. The first author described the physical injuries, his son's inability to stand unassisted or walk, and the description his son had given during the visit of the physical abuse to which he had been subjected. The first author also described the extremely poor physical condition of his son during the second visit.

2.10 The authors' representatives submitted that the District Medical Officer erred in failing to reach a conclusion of torture and ill-treatment, since there was clear evidence both from the injuries listed in the report and the testimony of the authors that the son had been subject to such treatment before being killed. The Magistrate agreed, ordering that the body be exhumed and sent to the Judicial Medical Officer at Batticaloa for further examination pursuant to section 373(2) of the Criminal Code.

On 27 November 1998, the body was exhumed in the presence of the Acting Magistrate and the body sent to the Judicial Medical Officer. The latter's report identified nine *ante mortem* injuries and concluded that these were caused by a blunt weapon applied prior to any shooting, whilst injuries to the neck could have been made by application of fingers. The cause of death was identified as four gunshot injuries.

2.11 On 21 October 1999, the Magistrate's verdict entered a finding of homicide, holding that the victim had been subjected to torture and had died of bleeding caused by gunshot wounds. He ordered that the supervisory officer of the Sammanthurai police should arrange for investigation by the Criminal Investigation Department, with a view to arrest and trial of the perpetrators. Also in 1999, Amnesty International, in a report on torture in Sri Lanka, cited the case as "an example of how police have tried to cover up torture in custody even if the inquest procedure is held under normal law".<sup>1</sup>

2.12 On 10 July 2002, over two and a half years later and after several requests, the Magistrate received a letter from the Director of the Criminal Investigation Department, informing him that an investigation had been conducted following a letter on the case from the UN Special Rapporteur on Torture to the Attorney-General.

2.13 On 19 August 2002, the Attorney-General wrote to the Director, with copy to the Registrar of the Kalmunai Magistrates' Court, to the effect that having considered all available evidence, it was clear that the police version of the events of arrest and death were false and had been fabricated. The available material did not however provide a basis for instituting criminal proceedings for torture and murder against the police officers, but only disciplinary action. The Director was therefore requested to forward the letter and the investigative report to the relevant disciplinary body for appropriate action. To the authors' knowledge, no further action was taken.

2.14 In 2000, the then Special Rapporteur on Torture described the case in his annual report to the then UN Commission on Human Rights.<sup>2</sup> In 2002, his successor as Special Rapporteur noted

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<sup>1</sup> Amnesty International document SA 37/10/99, at section 5.2.

<sup>2</sup> E/CN.4/2000/9, at para 937: "Sathasivam Sanjeevan died in police custody allegedly as a result of torture. He was reportedly arrested during a police search operation on 13 October 1998 in Paandiruppu and detained at the Almunai police station, where he was allegedly tortured. On 17 October 1998, the family reportedly went to the Amparai police station and then to the Government Hospital where they were informed that their son had been killed in an armed confrontation with the LTTE when he was being transferred to the Amparai station. A deep cut along his chest had reportedly been stitched up, his tongue severed and stitched together, and there were injuries on his head and hip. A second post-mortem inquiry ordered by the local magistrate confirmed signs of injuries by blunt weapons inflicted before the shooting. The second magisterial inquiry was still continuing."

See also the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2000/3/Add.1), at 405: "Sathasivam Sanjeevan was arrested by the police at Paandiruppu, Amparai district, on 3 October 1998. It was reported that when his relatives visited him at the Kalmunai police station on 14 and 15 October, they noted that he could not lift his arms and that he had difficulty swallowing. On 16 October the police informed his relatives that

in his annual report to the Commission on Human Rights<sup>3</sup> that the Attorney-General had concluded that there was insufficient evidence to initiate a criminal prosecution and instead recommended disciplinary measures. The Special Rapporteur expressed concern that the Government had not responded to a number of torture cases that he had brought to its attention.

2.15 Despite the international attention, the State party has refused to acknowledge its responsibility, pursue a criminal investigation against those considered responsible, or otherwise make reparation to the victim's family.

### **The complaint**

3.1 The authors argue that the facts described disclose violations of article 2, paragraph 3; article 6 and article 7 of the Covenant.

3.2 Under article 6, they claim firstly that the State party had failed in various respects to discharge its obligation to take sufficient measures to protect the right to life. First, the evidence indicated that the victim died of gunshot wounds in police custody, which the police claims occurred while transporting him. While in the absence of a thorough and independent investigation it is difficult to ascertain who actually carried out the fatal shooting, the evidence clearly showed that, at a minimum the State party failed in its positive duty to protect the victim while in police custody.

3.3 The authors refer in this respect to the jurisprudence of the Human Rights Committee and the European Court of Human Rights that (i) the State party is under a duty to protect the well-being of those under its control or care, particularly in police custody;<sup>4</sup> and (ii) there is a strong presumption of State responsibility for the death of an individual in police custody, in respect of which the State must provide a satisfactory and convincing explanation in order to successfully rebut.<sup>5</sup> In this case, the State party has failed to provide an explanation for the theory that the victim was in fact killed by the LTTE. This failure is supported by the Attorney-General's conclusions that the police had fabricated the account of death, with the result that the presumption of sole State responsibility for the death must prevail.

3.4 As to the second aspect of article 6 obligation, the authors note that the evidence indicates that the victim was subjected to serious, life-threatening torture. The State party failed to take adequate measures to protect the life of and well-being of Sathasivam. For example, at no stage was he brought before a judicial officer, a step recognized as essential not only for verification of reasons for arrest but also for monitoring detainee treatment.

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he had been killed in an armed confrontation with the Liberation Tigers of Tamil Eelam (LTTE) while being taken to Amparai by the police.”

<sup>3</sup> E/CN.4/2003/68, at para 1655.

<sup>4</sup> Barbato v Uruguay, Communication No. 84/1981, Views adopted on 21 October 1981; Lantsova v Russian Federation, Communication No. 763/1997, Views adopted on 26 March 2002; and Salman v Turkey (2002) 34 EHRR 17, at para 99.

<sup>5</sup> Jordan v United Kingdom (2003) EHRR 52, at para 103; McKerr v United Kingdom (2002) 24 EHRR, at para 109; and Salman v Turkey (2002) 34 EHRR, at para 99.

3.5 As to the third aspect of the article 6 obligation, the authors observe that there was a failure by the State party to investigate and prosecute the perpetrators after the victim's death. The Criminal Investigation Department, despite repeated requests from the local Magistrate, failed to carry out any investigation for over two years, and then only did so in response to a letter from the then UN Special Rapporteur on Torture. This was despite the fact that there was strong evidence that could have been followed up immediately, in view of the fact that there were a number of clearly identified police witnesses in the vehicle at the time of the shooting.

3.6 The authors note the jurisprudence of the Committee, the European Court of Human Rights and the Inter-American Court of Human Rights that States parties have an obligation deriving from the right to life, combined with the right to an effective remedy, to take positive measures to protect the right to life, including implementation of appropriate procedural safeguards that encompass investigation and prosecution of alleged State killings.<sup>6</sup> The absence of such safeguards can constitute a violation of the right to life even if there is insufficient evidence to hold the State responsible for the actual death.<sup>7</sup>

3.7 The authors submit that even if there remained doubts about the involvement of the police in the death of the victim, the State party remains in breach of article 6 due to the failure to prevent it and respond thereto. Even when limited investigation was eventually carried out, the Attorney-General refused to recommend prosecution and opted in favour of clearly inadequate disciplinary action, which, in any event, has not been initiated. Mere disciplinary measures, which trivialize so serious an offence are no substitute for criminal investigation and prosecution, which are required to be adopted in cases of arbitrary taking of life.<sup>8</sup> Further, in breach of the obligation to provide compensation to the family of the victim<sup>9</sup> neither compensation nor apology has been rendered by the State party for the death of the victim, even following the Attorney-General's recognition of culpability.

3.8 Under article 7, the authors argue that the victim was tortured in circumstances where the State's responsibility was clearly engaged, there being ample evidence that he was subjected to acts constituting cruel and inhuman treatment and, due to their severity, also to torture. Eyewitness testimony from the first author and his sister upon visiting the victim in the police station within 24 hours of arrest, indicated that he had sustained severe injuries in custody, to such extent that he was unable to stand, eat or drink. This evidence was reinforced by the postmortem finding of specific and detailed injuries consistent with severe ill-treatment and

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<sup>6</sup> General Comment 6 on article 6, at para 3; Chaparro v Colombia, Communication No. 612/1995, Views adopted on 29 July 1997; Baboeram-Adhin v Suriname, Communication Nos. 146 & 148-154/1983, Views adopted on 4 April 1985; Herrera Rubio v Colombia, Communication No. 161/1983, Views adopted on 2 November 1987; Velasquez Rodriguez v Honduras (Series C) No.4 (1988), at para 188; Edwards v United Kingdom (2002) 35 EHRR 19, at para 69; McCann v United Kingdom (1996) 21 EHRR 97, at para 161; and Kaya v Turkey (1999) 28 EHRR 1, at para 86.

<sup>7</sup> Kaya v Turkey, op.cit.; Tanrikulu v Turkey (2000) 30 EHRR 950 ; Kilic v Turkey (2001) 33 EHRR 1357.

<sup>8</sup> Baboeram-Adhin, op.cit.; Bautista de Arellana v Colombia, Communication No. 563/1993, Views adopted on 27 October 1995; at paras 8.2 and 10.

<sup>9</sup> Chaparro v Colombia, op.cit., at para 10.



beating. According to the Committee's jurisprudence there was clear violation of article 7 by reason of the victim being subjected to the type of treatment described by the Judicial Medical Officer.<sup>10</sup> In the absence of any plausible explanation by the State party, it must be concluded that torture and ill-treatment had indeed occurred.

3.9 The authors argue that there was no evidence that the victim was offered any protection against torture, beyond the two visits of his closest relatives. There was no judicial scrutiny of detention, no records maintained of his condition, nor monitoring at all by senior police officers or medical staff. The authors invoke the Committee's General Comment 20 (at para 11) and the UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, as safeguards necessary to guard against torture.<sup>11</sup>

3.10 The State party not only failed to provide adequate safeguards against torture, but also properly to investigate the conduct and prosecute the perpetrators. No investigation was carried out until over two years after the incident, and then only at the behest of the then UN Special Rapporteur on Torture. Following the investigation, the Attorney-General, despite having established the guilt of the police for torture of the victim, refused to prosecute the perpetrators, trivializing the crime by treating it instead as a disciplinary matter.<sup>12</sup> The Committee has held that as part of its duty to protect individuals against conduct in breach of article 7, the State must take measures to prevent, investigate and punish acts of torture, whether committed in an official capacity or otherwise.<sup>13</sup> Nor was compensation paid to the authors, the victim's parents, further compounding the breach of article 7.<sup>14</sup>

3.11 Under article 2, paragraph 3, the authors invoke the Committee's jurisprudence for the proposition that the circumstances of the victim's death, comprising arbitrary arrest and detention followed by torture and arbitrary and unlawful killing, indicate that criminal investigation and appropriate prosecution is the only effective remedy.<sup>15</sup> The failure of the State party to take effective legal, administrative, judicial and other measures to bring to justice those responsible for the torture and death of the victim thus breaches this obligation. The Committee

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<sup>10</sup> Bailey v Jamaica, Communication No. 334/1988, Views adopted on 31 March 1993; Linton v Jamaica, Communication No. 255/1987, Views adopted on 22 October 1992; Henry v Trinidad & Tobago, Communication No. 752/1997, Views adopted on 3 February 1999; Muteba v Zaire, Communication No. 124/1982, Views adopted on 24 July 1984, at para 10.2; Estrella v Uruguay, Communication No. 74/1980, Views adopted on 29 March 1983; and Arzuaga Gilboa v Uruguay, Communication No. 147/1983, Views adopted on 1 November 1985.

<sup>11</sup> See also Algur v Turkey, Appln. 32574/1996; judgment of 22 October 2002, at paras 33-47.

<sup>12</sup> See Bautista de Arellana, op.cit., at para 10.

<sup>13</sup> See Rodriguez v Uruguay, Communication No. 322/1988, Views adopted on 19 July 1994, at para 12.2; and General Comment 20, at paras 8 and 13. See also articles 12 to 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which the State party acceded in 1994, Aydin v Turkey (1998) 25 EHRR 251, at para 109; and Assenov v Bulgaria (1999) 31 EHRR 372, at para 106.

<sup>14</sup> General Comment 20, at para 14. See also article 14 of the Convention against Torture, and Committee against Torture: Dzemajl v Yugoslavia, Communication 161/2000, Views adopted on 21 November 2002, at para 9.6.

<sup>15</sup> General Comment 31, at para 18.

against Torture has likewise insisted that the right to a remedy requires an effective, independent and impartial investigation of allegations of torture.<sup>16</sup>

3.12 The decision of the Attorney-General not to initiate a prosecution but instead recommend disciplinary proceedings is clearly inadequate and does not constitute an effective remedy.<sup>17</sup> This breach was further compounded by the failure, to the authors' knowledge, of even disciplinary proceedings in fact being conducted. No apology or compensation has ever been offered to the authors despite the State party's acknowledgment, through its Magistrate and Attorney-General, that the police were responsible for the victim's torture and death.<sup>18</sup>

### **State party's failure to cooperate**

4. By Notes Verbale of 21 November 2005, 25 July 2006 and 6 November 2007, the State party was requested to submit to the Committee information 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 under the Optional Protocol, the State party concerned is required to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have taken. In the absence of a reply from the State party, due weight must be given to the author's allegations to the extent that these have been properly substantiated.

### **Issues and Proceedings before the Committee**

#### **Consideration of admissibility**

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

5.2 In the absence of any submission by the State party on the admissibility of the communication, and there being no further obstacle apparent to the Committee, the Committee must give due weight to the material before it. It concludes that the authors have properly substantiated, for purposes of admissibility, their claims under article 6; article 7; and article 2, paragraph 3, of the Covenant for consideration on the merits.

#### **Consideration of the 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 provided in article 5, paragraph 1, of the Optional Protocol.

6.2 As to the claim under article 6 that the death of the victim is directly attributable to the State party, the Committee recalls that according to the uncontested material the victim was in

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<sup>16</sup> Agiza v Sweden, Communication No. 233/2003, Views adopted on 20 May 2005, at para 13.7.

<sup>17</sup> Bautista v Colombia, op.cit., at para 8.2; and Chaparro v Colombia, op.cit., at para 10.

<sup>18</sup> Chaparro v Colombia, op.cit., at para 10; and Dzemajl Yugoslavia, op.cit., at para 9.6.

normal health before being taken into police custody, where he was shortly thereafter seen by eyewitnesses suffering substantial and severe injuries. The alleged reasons for his subsequent death, namely that he died during an LTTE attack, have been dismissed by the State party's own judicial and executive authorities. In these circumstances, the Committee must give due weight to the presumption that injury and, a fortiori, death - suffered in custody must be held to be attributable to the State party itself. The Committee accordingly concludes that the State party is responsible for arbitrary deprivation of the victim's life, in breach of article 6 of the Covenant.

6.3 As to the claim under article 7 that the injuries suffered by the victim prior to his death amounted to a violation of that provision, the Committee recalls that the State party has offered no challenge to the evidence submitted to the Committee that the victim suffered severe injuries in police custody, and that the victim himself imputed these injuries to the police. On the basis of the presumptive responsibility described in paragraph 6.2, *supra*, and in view of the gravity of injuries described, the Committee concludes that the State party subjected the victim to treatment in violation of article 7 of the Covenant.

6.4 As to the claims under articles 6 and 7 on the ground that the State party failed in its procedural obligation to properly investigate the victim's death and incidents of torture, and to take appropriate investigative and remedial measures, the Committee recalls its constant jurisprudence 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.<sup>19</sup> In the instant case, the State party's own authorities dismissed the explanation for the victim's death advanced by the police in whose custody the victim died, and its judicial authorities directed criminal proceedings against the offending police officers. In the absence of any explanation by the State party and in view of the detailed evidence placed before it, the Committee must conclude that the Attorney-General's decision not to initiate criminal proceedings in favour of disciplinary proceedings was clearly arbitrary and amounted to a denial of justice. The State party must accordingly be held to be in breach of its obligations under articles 6 and 7 to properly investigate the death and torture of the victim and take appropriate action against those found guilty. For the same reasons, the State party is in breach of its obligation under article 2, paragraph 3, to provide an effective remedy to the authors.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee reveal violations by Sri Lanka of article 6; article 7; and article 2, paragraph 3 in conjunction with articles 6 and 7, of the Covenant.

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including initiation and pursuit of criminal proceedings and payment of appropriate compensation to the family of the victim. The State party should also take measures to ensure that such violations do not recur 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

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<sup>19</sup> See the Committee's General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004).

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

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

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