

SRI LANKA

Follow-up - Jurisprudence Action by Treaty Bodies

CCPR A/57/40, vol. I (2002)

Chapter VI. Follow-up activities under the optional protocol

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228. The previous annual report of the Committee (A/56/40, vol. I, chap. VI) contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2001. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the seventy-fourth and seventy-fifth sessions, for which follow-up replies are not yet due. In many cases there has been no change since the previous report.

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Sri Lanka: Views in one case with findings of violations:

916/2000 - Jayawardena (annex IX); follow-up reply not yet due.

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229. For further information on the status of all the Views in which follow-up information remains outstanding or in respect of which follow-up consultations have been or will be scheduled, reference is made to the follow-up progress report prepared for the seventy-fourth session of the Committee (CCPR/C/74/R.7/Rev.1, dated 28 March 2002), discussed in public session at the Committee's 2009th meeting on 4 April 2002 (CCPR/C/SR.2009). Reference is also made to the Committee's previous reports, in particular A/56/40, paragraphs 182 to 200.

CHAPTER VI. Follow-up activities under the Optional Protocol

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223. The previous annual report of the Committee¹ contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2002. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the seventy-seventh and seventy-eighth sessions, for which follow-up replies are not yet due in the majority of cases. In many cases there has been no change since the previous report.*

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Sri Lanka: Views in one case with findings of violations:

916/2000 - *Jayawardena* (A/57/40); for follow-up reply, see paragraph 251 below.

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Overview of follow-up replies received during the reporting period, Special Rapporteur's follow-up consultations and other developments

224. The Committee welcomes the follow-up replies that have been received during the reporting period and expresses its appreciation for all the measures taken or envisaged to provide victims of violations of the Covenant with an effective remedy. It encourages all States parties that have addressed preliminary follow-up replies to the Special Rapporteur to conclude their investigations in as expeditious a manner as possible and to inform the Special Rapporteur of their results. The follow-up replies received during the period under review and other developments are summarized below.

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251. **Sri Lanka:** case No. 916/2000 - *Jayawardena* (A/57/40): the State party informed the Committee, by note verbale of 29 October 2002, that the Government was looking actively into the Committee's Views. It requested an extension for the Government to conclude its investigations and to give effect to the Views on the case. No further reply has been received since that date.

Notes

1. [Official Records of the General Assembly], Fifty-seventh Session, Supplement No. 40(A/57/40), vol. I, chap. VI.

* The document symbol A/[Session No.] /40 refers to the *Official Record of the General Assembly* in which the case appears; annex VI refers to the present report, vol. II.

CCPR CCPR/C/80/FU/1 (2004)

Follow-Up Progress Report submitted by The Special Rapporteur for Follow-Up on Views

Follow-up progress report

1. The current report updates the previous Follow-up Progress Report, (CCPR/C/71/R.13) [*Ed. Note: CCPR/C/71/R.13 is not publicly available*] which focused on cases in which, by the end of February 2001, no or only incomplete follow-up information had been received from States parties, or where follow-up information challenged the findings and recommendations of the Committee. In an effort to reduce the size of the follow-up report, this current report only reflects cases in which information was received from either the author or the State party from 1 March 2001 to 2 April 2004. It is the intention of the Special Rapporteur to update this report on an annual basis.

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Sri Lanka:

Jayawardena v. Sri Lanka, Case no. 916/2000, Views adopted on 22 July 2002

Violations found: Article 9, paragraph 1

Issues of case: Death threats against a Member of Parliament

Remedy recommended: "An appropriate remedy" for the author.

Deadline for State party follow-up information: 28 October 2002

Follow-up information received from State party: By note verbale of 29 October 2002, the State party informed the Committee that the Government was looking actively into the Committee's recommendations. It requested an additional 30 days to enable the Sri Lankan authorities to inform the Committee of all measures undertaken by the Government to give effect to its views on the above communication. No further reply received since then.

Follow-up information received from author: In January 2003, the author visited the OHCHR and indicated that he had joined the Cabinet after a change in Government in 2002.

Special Rapporteur's Recommendations: Reminder to be sent to the State party.

Sarma v. Sri Lanka, Case no. 950/2000, Views adopted on 16 July 2003

Violations found: Articles 7 and 9

Issues of case: Military detention, mistreatment and disappearance

Remedy recommended: A thorough and effective investigation into the disappearance and fate of the author's son, his immediate release if he is still alive, adequate information resulting from its investigation, and adequate compensation for the violations suffered by the author's son, the author and his family. To expedite the current criminal proceedings and ensure the prompt trial of all persons responsible for the abduction of the author's son under section 356 of the Sri Lankan Penal Code and to bring to justice any other person who has been implicated in the disappearance.

Deadline for State party follow-up information: 4 November 2003

Follow-up information received from State party: On 16 March 2004, the State party informed the Committee that it had conducted further investigations into the disappearance of the author's son, which included taking statements from the author and circulating notices in three newspapers urging anyone who may have information on his disappearance to come forward. No new information has been received to date and considering the lack of news, the State party is of the view that the author's son is probably dead. The Attorney General has directed the State Counsel to expedite the trial of a Mr. Ratnamala Mudiyansele Sarath Jayasinghe Perera, a former soldier, who is to be prosecuted in the High Court of Trincomalee. Apparently, there was a delay in the proceedings as firstly the accused did not appear in court and when he finally did appear he did so without a lawyer and the trial had to be adjourned. He has since been assigned state counsel and the trial judge will be apprised of the Views of the Committee and requested to expedite the trial. In the event, that the person indicted for his disappearance is found guilty there is provision for the Court to award compensation to the victim's family. It is also possible for the family to claim compensation from the State.

Follow-up information received from author: None

Special Rapporteur's recommendations: The author should be requested to comment on the State party's submission and the State party requested to provide regular updates on the investigation, the criminal trial and any request for compensation from the author and his family.

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CCPR, CCPR/C/SR.2280 (2005)

Human Rights Committee
Eighty-third session

Summary record of the 2280th meeting
Held at Headquarters, New York, on
Friday, 1 April 2005, at 10 a.m.

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Follow-up on views under the Optional Protocol

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2. **Mr. Ando**, speaking as Special Rapporteur for follow-up on Views under the Optional Protocol, presented the Follow-up Progress Report (CCPR/C/83/FU1 and FU2), which updated the Committee's previous annual report (CCPR/C/81/CRP.1/Add.6) on follow-up activities and included information received between the eighty-first and eighty-third sessions. It dealt with 20 different States parties and covered 18 cases...

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4. He would welcome guidance from and a decision by the Committee at its current or July session on how to deal with case No. 916/2000 (*Jayawardena v. Sri Lanka*) where the author, an opposition member of Parliament, claimed to have received death threats, while the State party considered that the author's allegations were unfounded...

5. **Mr. Schmidt** (Secretariat of the Committee), referring to case No. 916/2000 (*Jayawardena v. Sri Lanka*), said that the State party had conducted inquiries into the threats against the author and set up police patrols to monitor his residence. The author himself had been in touch with the secretariat almost on a daily basis at the beginning of the year, insisting that the Government had a duty to provide him with around-the-clock police protection. An informal inquiry conducted through the office of the High Commissioner for Human Rights in Colombo into the author's allegations had found that in the recent past he had considerably exaggerated the gravity of his situation.

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CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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230. The previous annual report of the Committee¹ contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2003. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the eightieth and eighty-first sessions, for which follow-up replies are not yet due in the majority of cases. In many cases there has been no change since the previous report.*

...

Sri Lanka:

Views in four cases with findings of violations:

916/2000 - *Jayawardena* (A/57/40); for follow-up reply, see A/58/40, paragraph 251; in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a reminder for a follow-up reply be sent to the State party;

950/2000 - *Sarma* (A/58/40); see paragraph 251 below for follow-up reply. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that the author be requested to comment on the State party's submission and the State party requested to provide regular updates on the investigation, the criminal trial and any request for compensation from the author and his family;

909/2000 - *Kankanamge* (annex IX); follow-up not yet due;

1033/2001 - *Nallaratnam* (annex IX); follow-up not yet due.

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OVERVIEW OF FOLLOW-UP REPLIES RECEIVED DURING THE REPORTING PERIOD,
SPECIAL RAPPOREUR'S FOLLOW-UP CONSULTATIONS AND OTHER
DEVELOPMENTS

231. The Committee welcomes the follow-up replies that have been received during the reporting period and expresses its appreciation for all the measures taken or envisaged to provide victims of violations of the Covenant with an effective remedy. It encourages all States parties which have addressed preliminary follow-up replies to the Special Rapporteur to conclude their

investigations in as expeditious a manner as possible and to inform the Special Rapporteur of their results. The follow-up replies received during the period under review and other developments are summarized below.

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254. Sri Lanka: as regards case No. 950/2000 - *Sarma* (A/58/40): on 16 March 2004, the State party informed the Committee that it had conducted further investigations into the disappearance of the author's son, which included taking statements from the author and circulating notices in three newspapers urging anyone who may have information on his disappearance to come forward. No new information has been received to date and considering the lack of news, the State party is of the view that the author's son is probably dead. The Attorney-General has directed the State Counsel to expedite the trial of a Mr. Ratnamala Mudiyansele Sarath Jayasinghe Perera, a former soldier, who is to be prosecuted in the High Court of Trincomalee. Apparently, there was a delay in the proceedings as, firstly, the accused did not appear in court and when he finally did appear he did so without a lawyer and the trial had to be adjourned. He has since been assigned State counsel and the trial judge will be apprised of the Views of the Committee and requested to expedite the trial. In the event that the person indicted for the disappearance is found guilty, there is provision for the court to award compensation to the victim's family. It is also possible for the family to claim compensation from the State.

Notes

1/ Ibid., *Fifty-eighth Session, Supplement No. 40* (A/58/40), vol. I, chap. VI.

* The document symbol A/[session No.]/40 refers to the *Official Records of the General Assembly* in which the case appears; annex IX refers to the present report, volume II.

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CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

224. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for the follow-up on Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

225. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information has been systematically requested in respect of all Views with a finding of a violation of Covenant rights. A total of 391 Views out of the 503 Views adopted since 1979 concluded that there had been a violation of the Covenant.

228. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party has in fact given effect to the Committee's recommendations, even though the State party did not itself provide that information.

229. The present annual report adopts a different format for the presentation of follow-up information compared to previous annual reports. The table below displays a complete picture of follow-up replies from States parties received as of 28 July 2005, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of complying with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up on Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

230. Follow-up information provided by States parties and by petitioners or their representatives since the last annual report is set out in a new annex VII, contained in Volume II of the present annual report. This, more detailed, follow-up information also indicates action still outstanding in those cases that remain under review.

FOLLOW-UP RECEIVED TO DATE FOR ALL CASES OF VIOLATIONS OF THE COVENANT

State party and number of cases with violation	Communication number, author and location ^a	Follow-up response received from State party and location	Satisfactory response	Unsatisfactory response	No follow-up response	Follow-up dialogue ongoing
...						
Sri Lanka (5)	916/2000, <i>Jayawardena</i> A/57/40	X A/58/40, A/59/40, A/60/40 (annex VII)				X
	950/2000, <i>Sarma</i> A/58/40	X A/59/40, A/60/40 (annex VII)				X
	909/2000, <i>Kankanamge</i> A/59/40	X A/60/40 (annex VII)				X
	1033/2001, <i>Nallaratnam</i> A/59/40	X A/60/40 (annex VII)				X
	1189/2003, <i>Fernando</i> A/60/40				X	X

^a The location refers to the document symbol of the *Official Records of the General Assembly, Supplement No. 40*, which is the annual report of the Committee to the respective sessions of the Assembly.

CCPR, A/60/40 vol. II (2005)

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Annex VII

FOLLOW-UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/59/40).

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State party	SRI LANKA
Case	Kankanamge, Victor Ivan, 909/2000
Views adopted on	38196
Issues and violations found	Intimidation of journalist by repeated presentation of defamation indictments - articles 2, paragraph 3, 14, paragraph 3 (c), and 19.
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy including appropriate compensation. The State party is also under an obligation to prevent similar violations in the future.
Due date for State party response	38314
Date of reply	38384
State party response	The State party submits that the government of Sri Lanka will refer the case to the Human Rights Commission of Sri Lanka to make recommendations on the question of payment of compensation, including the determination of the quantum of such compensation.
State party	SRI LANKA
Case	Jayawardena, 916/2000

Views adopted on	37458
Issues and violations found	Death Threats against Member of Parliament - article 9, paragraph 1.
Remedy recommended	“an appropriate remedy”
Due date for State party response	37550
Date of reply	38238
State party response	<p>(Reproduced in previous Interim Follow-up Report) Pursuant to the Committee’s views, the State party made further inquiries in the course of which the author had made another statement. Since he had been unable to identify the persons who had allegedly threatened him, no further legal action was taken. Nevertheless, the Government had agreed to provide additional protection for him if and when it became necessary. No such requests for additional protection have been made by him. In view of the above, the State party considers the matter closed.</p> <p>Following the author’s response of 18 October 2004, the State party submitted further comments on 24 March 2005. It stated that the deployment of security personnel for VIPs by the Police is effected on the basis of circular instructions issued by the Inspector General of Police. Accordingly, a Member of Parliament is entitled only to two security personnel. The threat perception report received from the Intelligence Services has not categorized Dr. Jayawardena as a Member of Parliament, having a threat for any source. However, in consideration of his request, two additional security personnel have been provided to him, increasing the total strength of his security staff to four.</p>
Author’s response	<p>(New information from author) On 18 October 2004, the author responded to the State party’s submission. He states that the State party has taken no steps to investigate his complaints of death threats. He requested additional security from the State party but has not yet received a positive response, in fact his security has been reduced. The President has not taken any steps to withdraw or to rectify the allegations which she made against him. He submits that he was elected again as a Member of Parliament at the elections held in April 2004, is currently the shadow Minister of Rehabilitation, Resettlement and Refugees, and through his work has made representations regarding the violations of human rights of</p>

opposition Members of Parliament. For this reason, he alleges that his life has become more vulnerable. He requests the Committee to inform the President of Sri Lanka to provide him with additional security as requested, as early as possible, and to continue to investigate his complaints.

State party	SRI LANKA
Case	Sarma, Jegatheeswara, 950/2000
Views adopted on	37817
Issues and violations found	Military detention, mistreatment and disappearance - articles 7 and 9.
Remedy recommended	The State party is under an obligation to provide the author and his family with an effective remedy, including a thorough and effective investigation into the disappearance and fate of the author's son, his immediate release if he is still alive, adequate information resulting from its investigation, and adequate compensation for the violations suffered by the author's son, the author and his family. The State party is also under an obligation to expedite the current criminal proceedings and ensure the prompt trial of all persons responsible for the abduction of the author's son under section 356 of the Sri Lankan Penal Code and to bring to justice any other person who has been implicated in the disappearance.
Due date for State party response	37928
Date of reply	38384
State party response	The State party submits that the criminal proceedings against the accused charged for the abduction of the author's son are pending before the High Court of Trincomalee. The Attorney-General has, on behalf of the Government of Sri Lanka, informed the court to expedite the trial. The Government will thereafter refer the case to the Human Rights Commission of Sri Lanka to make recommendations on the question of payment of compensation including the determination of the quantum of such compensation.
Author's comments	On 11 April 2005, counsel provided comments on the State party's submission. He stated that the State party has failed to give effect to the decision as it has: failed to investigate all those responsible even though their particulars were made available by the author to

the State party; failed to trace the interview the potential witnesses whose names and addresses were disclosed to the State party and whose evidence could cast light as to the whereabouts of the author's son, and failed to cite them as witnesses for the prosecution in the case of Corporal Sarath; failed to pay compensation, deferring consideration of the payment of compensation to the conclusion of the said trial, which, in light of experience, is likely to lead to further inordinate delays if it does not lead to the question of compensation being deferred indefinitely. The case against Corporal Sarath has been pending in the High Court of Trincomalee for the last three years. There is nothing on the case brief to indicate that any request to expedite the trial has been received by the Court, still less acted upon.

State party	SRI LANKA
Case	Nallarattnam Singarasa, 1033/2001
Views adopted on	38188
Issues and violations found	Unfair trial, mistreatment, no proper appeal - articles 2, paragraph 3, 7, 14, paragraph 1, 14, paragraph 2, 14, paragraph 3 (c), 4, paragraph 3 (g).
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective and appropriate remedy, including release or retrial and compensation. The State party is under an obligation to avoid similar violations in the future and should ensure that the impugned sections of the PTA are made compatible with the provisions of the Covenant.
Due date for State party response	38294
Date of reply	38384
State party response	As a general observation the State party expresses its concern that several recent decisions made by the Committee have been taken without paying due attention to the Constitutional provisions and the prevailing legal regime in Sri Lanka. It submits that in order to maintain the confidence of Governments it is imperative that the Committee give due weight to these factors and ensure that the process to which the State party has made a commitment in good faith is not abused by interested parties for their own needs.

The State party refers to the reference to the Prevention of Terrorism Act (PTA) in the Views (communication No. 1033/2001 and No. 950/2000) and wishes to clarify that the PTA was introduced only as temporary legislation due to the extraordinary security situation that prevailed in the country, with a view to preventing acts of terrorism and other unlawful activities, which caused tremendous destruction to human life and property in the last two decades in the State party. Under the provisions of the PTA, if a suspect is detained under a detention order section 9 (1), such a person should be produced before a Magistrate not later than 72 hours from the time of the arrest. However, a person can only be detained in police remand custody for a maximum period of 18 months, during which investigations relating to the suspect must be concluded.

After the signing of the Memorandum of Understanding (MOU), between the government of Sri Lanka and the LTTE in February 2002, all criminal investigations or arrests are carried out under the Criminal Procedure, and not under the PTA. Since the signing of the MOU, approximately 1,000 indictments of the PTA detainees have been withdrawn. In addition, 338 persons who were in detention pending charges were discharged at the end of 2003. As of January 2004, there are 62 cases pending in the Special High Court, established with a view to expediting such trials. These cases were filed before the MOU was signed and were not withdrawn by the Attorney-General due to the seriousness of the offence.

As to the Committee's request with respect to this case, the State party submits that the Constitution of Sri Lanka and the prevailing legal regime do not provide for release, retrial or the payment of compensation to a convicted person, after his conviction is affirmed by the highest appellate court, the Supreme Court. To take such steps would be contrary to the Constitution and be tantamount to an interference of the independence of the judiciary. However, with a view to complying with the Views, the legal authorities "could" recommend to the President, the exercise of the sovereign power for the grant of a pardon by virtue of powers vested in her under article 34 of the Constitution. Such a grant of pardon is a matter of unfettered sovereign discretion of the President. In exercising the above power, the Constitution only empowers the President to grant a pardon or respite of the sentence but does not empower the President to revoke a conviction passed by a competent court.

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CHAPTER VI FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

227. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up to Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

228. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information has been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 429 Views out of the 547 Views adopted since 1979 concluded that there had been a violation of the Covenant.

229. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or only relate to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

230. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much-belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's Views.

231. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

232. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to 7 July 2006, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up to Views continues. The Notes following a number of

case entries convey an idea of the difficulties in categorizing follow-up replies.

233. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/60/40, vol. I, chap. VI) is set out in annex VII to volume II of the present annual report.

FOLLOW-UP RECEIVED TO DATE FOR ALL CASES OF VIOLATIONS OF THE COVENANT

State party and number of cases with violation	Communication number, author and location	Follow-up response received from State party and location	Satisfactory response	Unsatisfactory response	No follow-up response received	Follow-up dialogue ongoing
...						
Sri Lanka (7)	916/2000, <i>Jayawardena A/57/40</i>	X A/58/40, A/59/40, A/60/40, A/61/40				X
	950/2000, <i>Sarma A/58/40</i>	X A/59/40, A/60/40				X
	909/2000, <i>Kankanamge A/59/40</i>	X A/60/40				X
	1033/2001, <i>Nallaratnam A/59/40</i>	X A/60/40				X
	1189/2003, <i>Fernando A/60/40</i>	X A/61/40		X (A/61/40)		X
	1249/2004, <i>Immaculate Joseph, et al. A/61/40</i>	X A/61/40				X
	1250/2004, <i>Rajapakse A/61/40</i>					
...						

CCPR, A/61/40 vol. II (2006)

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Annex VII

FOLLOW-UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/60/40).

...

State party	SRI LANKA
Case	Jayawardena, 916/2000
Views adopted on	22 July 2002
Issues and violations found	Death Threats against Member of Parliament - Article 9, paragraph 1.
Remedy recommended	“an appropriate remedy”
Due date for State party response	22 October 2002
Date of State party’s response	9 September 2004
State party response	<p>The Committee will recall, as set out in the 83rd and 84th reports that, pursuant to the Committee’s Views, the State party made further inquiries of the author. Since he had been unable to identify the persons who had allegedly threatened him, no further legal action was taken. Nevertheless, the Government had agreed to provide additional protection for him if and when it became necessary. No such requests for additional protection had been made by him.</p> <p>Following the author’s response of 18 October 2004, the State party submitted further comments on 24 March 2005. It stated that the deployment of security personnel for VIPs by the Police is effected on the basis of circular instructions issued by the Inspector General of Police. Accordingly, a Member of Parliament is entitled only to two security personnel. However, in consideration of his request,</p>

two additional security personnel were provided to him, increasing the total strength of his security staff to four.

Author's response

The Committee will recall, as set out in the 84th that, on 18 October 2004, the author responded to the State party's submission. He stated that the State party had taken no steps to investigate his complaints of death threats. He had requested additional security from the State party but had not received a positive response, in fact his security has been reduced. The President had not taken any steps to withdraw or to rectify the allegations which she made against him. He submitted that he was again elected as a Member of Parliament at the elections held in April 2004. As the then shadow Minister of Rehabilitation, Resettlement and Refugees, he made representations regarding the violations of human rights of opposition Members of Parliament. For this reason, he alleged that his life has become more vulnerable. He requested the Committee to inform the President of Sri Lanka to provide him with additional security as requested, as early as possible, and to continue to investigate his complaints.

On 10 January 2006, the author informed the Committee that Mr. Pararajasingham, a Member of Parliament from the Tamil National Alliance (TNA), was killed on 24th December by an unidentified gunman. He had been canvassing with the author to find a peaceful settlement to the ethnic conflict in Sri Lanka. The author submits that there were reliable reports that Mr. Pararajasingham was targeted by the Karuna group (an anti-LTTE group in the Eastern Province). The author believes that the same group has targeted him and requests the Committee to take "appropriate action to protect his life".

Case

Fernando, 1189/2003

Views adopted on

31 March 2005

Issues and violations found

Unfair trial – Article 9, paragraph 1.

Remedy recommended

In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an adequate remedy, including compensation, and to make such legislative changes as are necessary to avoid similar violations in the future. The State party is under an obligation to avoid similar violations in the future.

Due date for State party response

28 July 2005

Date of State party's response

8 August 2005

State party response

It submits that at the time the State party became a party to the Optional Protocol it was not envisaged that the competence of the Committee would extend to a consideration, review or comment of any judgement given by a competent Court in Sri Lanka, in particular on findings of fact and on sentences imposed by such Court upon a full consideration of evidence placed before it. It submits that as the independence of the judiciary is guaranteed under the Constitution the Government has no control over the judicial decisions given by a competent Court, nor can it give directions with regard to future judgements of such Court.

While respecting the Views of the Committee, the State party is unable to consider the payment of compensation to any persons on the basis of a conviction and sentence passed by a competent court in Sri Lanka. Payment of compensation on the basis of the conviction and sentence would be tantamount to undermining the authority of the Supreme Court, which convicted and sentenced the author and would be construed as an interference with the independence of the judiciary. Likewise, the State party cannot prevent similar judgements of this nature as it has no control over future decisions or judgements of the Court, nor can it give directions to the Supreme Court in relation to any future judgements. Thus, the State party submits that it is unable to give effect to the Views of the Committee as set out in paragraph 11 of the Views. With regard to the need for legislation change, the State party informs the Committee that it will refer the matter to the Law Commission of Sri Lanka for its consideration.

Author's response

The author provides a detailed commentary of 20 pages on the State party's response. He contests the State party's argument that the Views are not binding. He refers to the customary law principle of *pacta sunt servada* enshrined in Article 26 of the Vienna Convention on the Law of Treaties confirming that every treaty is binding on states parties and must be performed by them in good faith. In addition, the State party acceded to the Optional Protocol, which gives the Committee authority to consider individual complaints, without reservations.

As the State party did not make any reservations to the ICCPR (in particular article 2) or OP, it cannot argue that the Views have no application to the domestic legal context in the absence of specific legal provisions in its national law. He provides a significant amount of research on Sri Lankan jurisprudence (provided on request) to demonstrate that international obligations are buttressed by judicial

incorporation of international human rights standards in a growing body of jurisprudence in Sri Lanka since the late eighties. From another standpoint, the relevance of international legal standards has also been affirmed by the Directive Principles of State Policy, which though non-justiciable in Sri Lanka's constitutional context, has a direct impact on legal policy in the country. Article 27 (15) of these Principles mandate the State to "... endeavor to foster respect for international law and treaty obligations in dealings among nations". As to the argument on the independence of the judiciary, the author points to the Committee's GC on article 2, and to the Committee's Views. He provides jurisprudential to demonstrate that it is a long standing principle of international law that the State is regarded as a unity and that its internal divisions, whether these are territorial, organizational or other, cannot be invoked in order to avoid its international responsibility. In addition, he argues that complying with international obligations is not an interference with independence of the judiciary, which would take place if the government, of its own motion, seeks to undermine a legal judgement or similar judicial act. The fact that the Committee's decisions stand to be implemented through the executive does not mean that, from the perspective of independence of the judiciary, these are decisions of the executive. The payment of compensation does not qualify as interference with the independence of the judiciary, as defined by article 161 (1) of the State party's Constitution. Interpreting one provision of a Constitution requires accommodation between all of its provisions.

As to the argument on the impossibility of the State party preventing such decisions, the author submits that it is legitimate for the other branches of government, particular the legislature, to set standards which the judiciary should apply, through the adoption of laws. It would also be legitimate for such laws to regulate contempt of court.

As to the information that the State party has forwarded the Views to the Law Commission for "consideration", the author states that this will not be sufficient to meet its obligations as it will only result in a process which has already proved to be futile. It is submitted that this part of the response is a violation of its obligations in as much as the commitment envisaged therein envisaged a specific undertaking on the part of the State party, in this instance to enact a Contempt of Court Act. Such law is alleged to be pressing as contempt is currently interpreted and applied by the domestic courts in an extremely restrictive manner (jurisprudence provided).

**Committee's
Decision**

The Committee regards the State party's response as unsatisfactory and considers the follow-up dialogue ongoing.

Case	Joseph, 1249/2004
Views adopted on	21 October 2005
Issues and violations found	Discrimination on religious grounds – Articles 18, paragraph 1 and 26.
Remedy recommended	The State party is under an obligation to provide the authors with an effective remedy giving full recognition to their rights under the Covenant. The State party is also under an obligation to prevent similar violations in the future.
Due date for State party response	29 January 2006
Date of State party's response	22 June 2006
State party response	The State party submits that it must respect and act in accordance with the Constitution of the Republic and within the framework of its domestic legal system. It is not in a position to act contrary to any decision given by any court in Sri Lanka. The Supreme Court is the highest court in Sri Lanka and its determination is final and binding both on the Government of Sri Lanka, and the Parliament. Therefore, there is no remedy that could be afforded by the Government to the authors. However, in the event that the same Bill or even a similar Bill is represented in Parliament and the constitutionality of such Bill is challenged, the Government can apprise the Supreme Court of the Views.

...

CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

213. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up to Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

214. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information has been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 452 Views out of the 570 Views adopted since 1979 concluded that there had been a violation of the Covenant.

215. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or only relate to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

216. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much-belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's Views.

217. In many cases, the Committee secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

218. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to 7 July 2007, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up to Views continues. The Notes following a number of case entries

convey an idea of the difficulties in categorizing follow-up replies.

219. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/61/40, vol. I, chap. VI) is set out in annex VII to volume II of the present annual report.

FOLLOW-UP RECEIVED TO DATE FOR ALL CASES OF VIOLATIONS OF THE COVENANT

State party and number of cases with violation	Communication number, author and location	Follow-up response received from State party and location	Satisfactory response	Unsatisfactory response	No follow-up response received	Follow-up dialogue ongoing
...						
Sri Lanka (7)	916/2000, <i>Jayawardena A/57/40</i>	X A/58/40, A/59/40, A/60/40, A/61/40				X
	950/2000, <i>Sarma A/58/40</i>	X A/59/40, A/60/40				X
	909/2000, <i>Kankanamge A/59/40</i>	X A/60/40				X
	1033/2001, <i>Nallaratnam A/59/40</i>	X A/60/40				X
	1189/2003, <i>Fernando A/60/40</i>	X A/61/40		X (A/61/40)		X
	1249/2004, <i>Immaculate Joseph, et al. A/61/40</i>	X A/61/40				X
	1250/2004, <i>Rajapakse A/61/40</i>				X	
...						

CCPR, CCPR/C/SR.2564/Add.1 (2008)

HUMAN RIGHTS COMMITTEE

Ninety-third session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 2564th MEETING

Held at the Palais Wilson, Geneva,

on Wednesday, 23 July 2008 at 11.25 a.m.

...

FOLLOW-UP TO CONCLUDING OBSERVATIONS ON STATE REPORTS AND TO
VIEWS UNDER THE OPTIONAL PROTOCOL

...

Follow-up progress report of the Human Rights Committee on individual communications
(CCPR/C/93/R.5)

40. Mr. SHEARER, Special Rapporteur for follow-up on communications, introduced the Committee's progress report on individual communications.

...

48. Turning to the case relating to detention and disappearance in Sri Lanka, he said that the State party had informed the Committee in 2005 that criminal proceedings were pending against the persons thought to be responsible for the abduction of the author's son. The author had responded by saying that no action had been taken, and in April 2008 had informed the Committee that he had been told that the Human Rights Commission of Sri Lanka had submitted its recommendations to the Attorney General, since which time no further action had been taken. Although the deadline for State party comments on that information had passed, no response had been received. The Committee should decide whether to wait any longer for comments by the State party, or whether to take action immediately.

...

The meeting rose at 1.05 p.m.

VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

187. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up to Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

188. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information had been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 429 Views out of the 547 Views adopted since 1979 concluded that there had been a violation of the Covenant.

189. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or relate only to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

190. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much-belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's recommendations.

191. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

192. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to 7 July 2008, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up to Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

193. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/62/40) is set out in annex VII to volume II of the present annual report.

...						
Sri Lanka (11)	916/2000, <i>Jayawardena A/57/40</i>	X A/58/40, A/59/40, A/60/40, A/61/40				X
	950/2000, <i>Sarma A/58/40</i>	X A/59/40, A/60/40, A/63/40				X
	909/2000, <i>Kankanamge A/59/40</i>	X A/60/40				X
	1033/2001, <i>Nallaratnam A/59/40</i>	X A/60/40				X
	1189/2003, <i>Fernando A/60/40</i>	X A/61/40		X (A/61/40)		X
	1249/2004, <i>Immaculate Joseph et al. A/61/40</i>	X A/61/40				X
	1250/2004, <i>Rajapakse A/61/40</i>				X	
	1373/2005, <i>Dissanakye A/63/40</i>	Not due				
	1376/2005, <i>Bandaranayake A/63/40</i>	Not due				
	1426/2005, <i>Dingiri Banda A/63/40</i>				X	

	1436/2005, <i>Sathasivam</i> A/63/40	Not due				
...						

Annex VII

FOLLOW UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/62/40).

...

State party	SRI LANKA
Case	Sarma, Jegatheeswara, 950/2000
Views adopted on	16 July 2003
Issues and violations found	Military detention, mistreatment and disappearance - articles 7 and 9.
Remedy recommended	The State party is under an obligation to provide the author and his family with an effective remedy, including a thorough and effective investigation into the disappearance and fate of the author's son, his immediate release if he is still alive, adequate information resulting from its investigation, and adequate compensation for the violations suffered by the author's son, the author and his family. The State party is also under an obligation to expedite the current criminal proceedings and ensure the prompt trial of all persons responsible for the abduction of the author's son under section 356 of the Sri Lankan Penal Code and to bring to justice any other person who has been implicated in the disappearance.
Due date for State party response	4 November 2003
Date of reply	2 February 2005
State party response	The State party submitted that the criminal proceedings against the accused charged with the abduction of the author's son were pending before the High Court of Trincomalee. The Attorney-General had, on behalf of the Government of Sri Lanka, informed the court to expedite the trial. The Government intended

to refer the case to the Human Rights Commission of Sri Lanka to make recommendations on the question of payment of compensation including the determination of the quantum of such compensation.

Author's comments

On 11 April 2005, counsel provided comments on the State party's submission. He stated that the State party has failed to give effect to the decision as it has: failed to investigate all those responsible even though their particulars were made available by the author to the State party; failed to trace the interviews of the potential witnesses whose names and addresses were disclosed to the State party and whose evidence could cast light as to the whereabouts of the author's son, and failed to cite them as witnesses for the prosecution in the case of Corporal Sarath; failed to pay compensation, deferring consideration of the payment of compensation to the conclusion of the said trial, which, in light of experience, is likely to lead to further inordinate delays if it does not lead to the question of compensation being deferred indefinitely. The case against Corporal Sarath has been pending in the High Court of Trincomalee for the last three years. There is nothing on the case brief to indicate that any request to expedite the trial has been received by the Court, still less acted upon.

On 10 April 2008, the author states that he was informed on 8 October 2007 by the Human Rights Commission of Sri Lanka that it had sent its recommendations for compensation to the Attorney General of Sri Lanka. However, since then he has not heard from the Government.

Further action taken or required

The author's submission was sent to the State party on 21 April 2008 with a request for comments by 23 June 2008.

Committee's Decision

The Committee considers the dialogue ongoing.

...

VI. FOLLOW UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

230. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up on Views to this effect. Ms. Ruth Wedgwood has been the Special Rapporteur since July 2009 (ninety-sixth session).

231. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information had been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 543 Views out of the 681 Views adopted since 1979 concluded that there had been a violation of the Covenant.

232. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or relate only to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

233. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's recommendations.

234. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

235. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to the ninety-sixth session (13-31 July 2009), in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up on Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

236. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/63/40) is set out in annex IX to volume II of the present annual report.

...						
Sri Lanka (13)	916/2000, <i>Jayawardena</i> A/57/40	X A/58/40, A/59/40, A/60/40, A/61/40				X
	950/2000, <i>Sarma</i> A/58/40	X A/59/40, A/60/40, A/63/40				X
	909/2000, <i>Kankanamge</i> A/59/40	X A/60/40				X
	1033/2001, <i>Nallaratnam</i> A/59/40	X A/60/40				X
Sri Lanka (<i>cont'd</i>)	1189/2003, <i>Fernando</i> A/60/40	X A/61/40		X A/61/40		X
	1249/2004, <i>Immaculate Joseph et al.</i> A/61/40	X A/61/40				X
	1250/2004, <i>Rajapakse</i> A/61/40				X	
	1373/2005, <i>Dissanakye</i> A/63/40	Not due				
	1376/2005, <i>Bandaranayake</i>	Not due				

	A/63/40					
	1406/2005, <i>Weerawanza</i> , A/64/40				X	
	1426/2005, <i>Dingiri Banda</i> A/63/40				X	
	1432/2005, <i>Gunaratna</i> , A/64/40				X	
	1436/2005, <i>Sathasivam</i> A/63/40	Not due				
...						

A/64/40 vol. II (2009)

...

Annex IX

Follow-up of the Human Rights Committee on individual communications under the Optional Protocol to the International Covenant on Civil and Political Rights

This report sets out all information provided by States parties and authors or their counsel since the last annual report (A/63/40).

...

State party	Sri Lanka
Case	<i>Nallaratnam Singarasa, 1033/2001</i>
Views adopted on	21 July 2004
Issues and violations found	Burden of proof with respect to the extraction of a statement under duress, unfair trial, undue delay - article 14, paragraphs 1, 2, and 3 (c), and article 14, paragraph (g), read together with articles 2, paragraph 3, and 7 of the Covenant.
Remedy recommended	An effective and appropriate remedy, including release or retrial and compensation. The State party is under an obligation to avoid similar violations in the future and should ensure that the impugned sections of the Prevention of Terrorism Act (PTA) are made compatible with the provisions of the Covenant.
Due date for State party response	8 November 2004
Date of State party response	2 February 2005
State party response	<p>The Committee will recall that on 2 February 2005, the State party had submitted, inter alia (see A/60/40, vol. II, p. 530-532) that the Constitution of Sri Lanka and the prevailing legal regime did not provide for release, retrial or the payment of</p> <p>compensation to a convicted person, after his/her conviction had been affirmed by the highest appellate court, the Supreme Court. To take such steps would be contrary to the Constitution and be</p>

tantamount to an interference of the independence of the judiciary.

Although not specifically provided by the State party, the Committee is reminded of the Sri Lankan Supreme Court decision of 15 September 2006 in this case, relating to a request to have the author retried while referring to the Committee's Views. In this decision, the Supreme Court decided that the accession of the Sri Lankan Government to the Optional Protocol to the Covenant is inconsistent with the Constitution, as the treaty had not been implemented by legislation. The Court concluded that in the absence of such domestic implementing legislation, the accession to the Optional Protocol by the President in 1997 had no legal effect in Sri Lanka.

Author's comments

On 30 June 2008, the author responded to a request on the significance if any on his case of the Supreme Court judgement of 17 March 2008 (Supreme Court Ref No. 01/2008). The author responded that this judgement had no practical significance for his case for three reasons. Firstly, the Supreme Court decision in his own Application for Revision, of 15 September 2006, is a binding and non-reviewable decision, in which it rejects the possibility of giving effect to the Committee's decision and makes it clear that neither the Covenant nor the Views have any effect in Sri Lanka. Consequently, a subsequent decision cannot and does not have any effect on that judgement. Secondly, the Supreme Court decision of 17 March 2008 is premised on a finding that Covenant rights are protected in the Sri Lankan legal order through existing laws and the Constitution. It does not anticipate a new basis or right of challenge. The author explains that some rights enshrined in the International Covenant on Civil and Political Rights - including some of the fair trial guarantees applicable in his case - are not effectively protected in the Constitution or statute and provides details of such rights. Thirdly, the judgement will have no effect in practice on the restrictions of his rights through the PTA, as its provisions are not subject to review. Despite, the author's view that the judgement in question will have no effect on his case, he expresses the view

that it could prove important in principle in affirming that all rights enshrined in the International Covenant on Civil and Political Rights are directly applicable and justiciable under domestic law, which should be interpreted as including those

rights in respect of which Sri Lanka has been found in breach in the author's case. It should, in principle, require that the Supreme Court revisit the decision in this case. However, the author is doubtful as to whether this judgement will have any real impact in practice.

Consultations with the State party

During a consultation in March 2008, in New York, between State party representatives and the Special Rapporteur on follow-up to concluding observations, the representatives provided the Rapporteur with a copy of another judgement of the Supreme Court (SC Ref No. 01/2008) in response to some of the issues raised. According to this judgement the Constitution, the International Covenant on Civil and Political Rights Act and other domestic laws give adequate recognition to the civil and political rights contained in the Covenant, and rights recognized

in the Covenant are justiciable through the medium of the legal and constitutional processes prevailing in the State party. This judgement was sent to the author with a request for comments on how if at all it would affect his case in particular with respect to the Supreme Court judgement in his own case.

The author's submission was sent to the State party for comments by 1 April 2009.

Committee's Decision

The follow-up dialogue is ongoing.

...

A/65/40 vol. I (2010)

...

Chapter VI. Follow-up on individual communications under the Optional Protocol

202. The present chapter sets out all information provided by States parties and authors or their counsel since the last annual report (A/64/40).

...

State party	Sri Lanka
Case	<i>Sanjeevan, 1436/2005</i>
Views adopted on	8 July 2008
Issues and violations found	Failure to investigate, torture, death in custody - article 6; article 7; and article 2, paragraph 3 in conjunction with articles 6 and 7, of the Covenant.
Remedy recommended	An effective remedy, including initiation and pursuit of criminal proceedings and payment of appropriate compensation to the family of the victim.
Due date for State party response	9 January 2009
State party response	None
Author's comments	On 21 September 2009, the author submitted that he had not received any response from the State party in connection with the Views and had received no offer of compensation. He encourages the Committee to engage with the State party to resolve this matter.
Committee's Decision	The follow-up dialogue is ongoing.

