



Sir Nigel Rodley
Chairperson, Human Rights Committee
Office of the High Commissioner for Human Rights
UNOG-OHCHR
CH 1211 Geneva 10
Switzerland

19 December 2013

Dear Sir Nigel

110th session of the Human Rights Committee – Pre-sessional meeting on Sri Lanka

We write in relation to the pre-sessional meeting of the country taskforce on Sri Lanka during the forthcoming 110th session of the Human Rights Committee from 10-28 March 2014.

We would like to highlight a specific issue for consideration of the taskforce in this process, namely Sri Lanka's failure to cooperate with the Committee in the procedure established by the Covenant's First Optional Protocol, including its failure to implement the Views of the Committee decided under this procedure.

Failure to cooperate with Optional Protocol procedure

It is the Committee's well-established legal position that implicit in a State's adherence to the Protocol is an undertaking to co-operate with the Committee in good faith so as to permit and enable it to consider individual communications lodged with the Committee under the Protocol.¹ Article 4 (2) of the Protocol requires State parties against which a communication is made to respond to the complaints raised. The Article uses mandatory language ("shall submit to the Committee"), and the Committee's General Comment No. 33 is clear that submission of a response is an obligation under the Optional Protocol. According to the Committee: "[t]he first obligation of a State Party, against which a claim

¹ See, eg. the Committee's views of 29 October 2012 concerning Communication No. 2120/2011, UN Doc. CCPR/C/106/D/2120/2011, § 9.2.

has been made by an individual under the Optional Protocol, is to respond to it within the time limit of six months set out in article 4 (2)".²

The obligation of the State Party under article 4 (2) to comment and provide relevant factual and legal arguments upon registered communications is buttressed by the general obligation to co-operate with the Committee in its consideration of individual communications, deriving from the general obligation to observe treaty obligations in good faith read with articles 1 and 5 (1) of the Protocol.³ Under Article 1 of the Protocol State parties recognise the competence of the Committee to hear individual communications. Article 5 (1) of the Protocol mandates the Committee to consider all individual communications received under the Protocol in the light of all information made available to it by both parties to the proceedings.

Under rule 92 of its rules of procedure, the Committee may also request, before adopting its Views, that a State party to take interim measures in order to avoid irreparable damage to the victim of the alleged violations. In addition to showing a failure to cooperate, and additional violations which may result from the failure to implement protective orders, the Committee has stressed how the flouting of such requests for interim protection measures "undermines the protection of Covenant rights through the Optional Protocol".⁴

As representatives of a number of individuals who have submitted communications to the Committee concerning Sri Lanka,⁵ we have first-hand experience of Sri Lanka's failure to cooperate in the Optional Protocol process. Sri Lanka has not provided responses in any of the 4 registered cases that the organisations have submitted together since 2009, and failed to implement interim protective measures ordered by the Committee in the case of *Peiris v Sri Lanka*. This failure to cooperate was noted "with regret" by the Committee in the Views adopted in that case.⁶

Failure to implement Views adopted by the Committee

Sri Lanka, as signatory to the Covenant and the Optional Protocol, has the obligation to use whatever means lie within its power in order to give effect to the Views issued by the Committee.⁷ The duty to comply with the views of the Committee arises from its acceptance

² Human Rights Committee, General Comment No. 33, para. 8. See also para. 10 ("In the experience of the Committee, States do not always respect their obligation. In failing to respond to a communication, or responding incompletely, a State which is the object of a communication puts itself at a disadvantage..."); and para. 18 ("...In a number of those cases these responses have been made where the State party took no part in the procedures, having not carried out its obligation to respond to communications under article 4, paragraph 2 of the Optional Protocol").

³ See Human Rights Committee, General Comment No. 33, para. 15.

⁴ See Human Rights Committee, A/68/40 (Vol. I), para. 178.

⁵ These cases include *Peiris v Sri Lanka* (1862/2009), *Amarasinghe v Sri Lanka* (2209/2012), *Guneththige v Sri Lanka* (2087/2013) and *Jasudasan v Sri Lanka* (2256/2013).

⁶ *Peiris v Sri Lanka* (1862/2009), Views adopted 26 October 2011, CCPR/C/103/D/1862/2009, paras. 5.1 and 5.2.

⁷ CCPR/C/GC/33 (2008), para. 20.

of the Optional Protocol and its obligations under the Covenant. The Views adopted by the Committee are legal in character and represent an authoritative determination made by the recognised interpreter of the Covenant.⁸ By ratifying the Covenant and its Optional Protocol, states accept the authority of the Committee in this regard and agree to respect and implement its Views.

Since 2002 the Committee has adopted fourteen views in which it upheld complaints brought against Sri Lanka under the Optional Protocol. The Committee's follow up reports show that, contrary to its obligations under article 2 (3) ICCPR and the Optional Protocol, Sri Lanka has implemented very few, if any, of those Views to date.⁹ In particular, there is no evidence that any victim has been provided with compensation, or that Sri Lanka has instigated an effective investigation into the violations capable of leading to successful prosecution. Since 2006, Sri Lanka has altogether failed to respond to any of the Committee's recommendations.

In fact, in 2006, Sri Lanka's Supreme Court held, in the case of *Singarasa v. Sri Lanka*, that the Human Rights Committee's Views are not binding in Sri Lanka due to a lack of implementing legislation.¹⁰ This absence of implementing legislation had already been the subject of the Human Rights Committee's first recommendation in its concluding observations on Sri Lanka's combined fourth and fifth periodic review in 2003:

*[E]nsure that its legislation gives full effect to the rights recognized in the Covenant and that domestic law is harmonized with the obligations undertaken under the Covenant.*¹¹

Following the *Singarasa* judgment, Sri Lanka enacted the ICCPR Act in 2007 (Act No. 56 of 2007). However, the Act has a number of shortcomings, including that it does not establish any procedure for implementation of the Committee's Views. The coming into force of the Act has not resulted in enhanced implementation of the Human Rights Committee's Views, which suggests that it has been an inadequate response to the lack of implementation. Indeed, the coming into force of the Act has marked a sharp decrease in the level of cooperation provided to the Committee.

The State Party's failure to cooperate with the Committee shows particular disregard towards the collective human rights protection machinery established by the Covenant and the Optional Protocol. The pattern, if not policy, of non-compliance on the part of the State party has resulted in a complete frustration of the right to an effective remedy for violations

⁸General Comment No 33: The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights, doc. CCPR/C/GC/33 (2008), paras. 11 and 13.

⁹A summary table of information provided in the Committee's follow-up reports on each case is included as Annex A.


¹⁰*Singarasa v. Attorney General*, S.C. SpL(LA) No. 182/99 (Supreme Court of Sri Lanka, 15 September 2006), available at: <http://www.ruleoflawsrilanka.org/cases/un-cases-for-sri-lanka/special-case-supreme-court-on-nallaratanam>.

¹¹Human Rights Committee, *Concluding Observations on the combined fourth and fifth periodic reports: Sri Lanka*, UN Doc CCPR/CO/79/LKA (2003), para. 7.

of the rights guaranteed under the Covenant, and we suggest that this issue is raised with the State Party in the Committee's List of Issues.

Please do not hesitate to contact us should you require further details.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'C. Ferstman', written in a cursive style.

Carla Ferstman

REDRESS

on behalf of REDRESS and the ALRC

Annex A

Summary of Views adopted and information provided in follow-up report

Author (Date of views)	Violation	Remedy ordered – Effective remedy, including:	Follow-up report
Peiris (2011)	Articles 6, 7 and 17 (alone & w/ 23(1)); 9(1); and 2(3) w/ 6 and 7	Ensuring perpetrators are brought to justice; ability to return to domicile in safety; and reparation, including compensation and an apology.	The Committee indicates that dialogue is ongoing but provides no other updates on this case. ¹²
Gunaratna (2009)	Articles 2(3) w/ 7 and 9; 9(1) alone	Protection from threats and intimidation; proceedings against perpetrators pursued without undue delay; and reparation, including compensation.	No response from the State party.
Weerawansa (2009)	Articles 6(1) and 10(1)	Commutation of death sentence; compensation; and humane treatment while incarcerated.	No response from the State party.
Sathasivam and Saraswathi (2008)	Articles 6; 7; and 2(3) w/ 6 and 7	Initiation and pursuit of criminal proceedings; compensation.	No response from the State party.
Bandaranayake (2008)	Article 25(c) w/ 14(1)	Compensation	No response from the State party.
Dissanayake and Banda (2008)	Articles 9(1); 19; and 25(b)	Compensation; restoration of right to vote and to be elected; and change relevant laws and practice to avoid recurrence	No response from the State party.
Banda (2007)	Article 2(3) w/ 7	Compensation; effective measures to ensure Magistrate Court's proceedings are expeditiously completed; full reparation granted	No response from the State party.
Rajapakse (2006)	Articles 2(3) w/ 7; 9(1)(2) and (3) alone and w/ 2(3) re: circumstances of arrest; 9(1) re: security of person	Effective measures to ensure High Court and Supreme Court proceedings are expeditiously completed; protection from threats and intimidation; effective reparation	No response from the State party.
Sister Immaculate Joseph, et. al. (2005)	Articles 18(1) and 26	Full recognition to rights	State party held that it cannot provide an effective remedy because it cannot act contrary to decisions of

¹² The authors of this letter, who represented the victim, confirm that no remedy has in fact been provided.

			any court within Sri Lanka.
Fernando (2005)	Article 9(1)	Compensation; necessary legislative changes	State party held that it cannot provide an effective remedy because it cannot act contrary to decisions of the Supreme Court.
Singarasa (2004)	Articles 14 (1); (2); (3)(c); and (3)(g) w/ 2(3) and 7	Release or retrial and compensation; legislative changes	State party held that it cannot provide an effective remedy because it cannot act contrary to decisions of the Supreme Court.
Kankanamge (2004)	Articles 14(3)(c); and 19 w/ 2(3)	Compensation	In 2005, State party stated that it referred matter to the Sri Lankan Human Rights Commission but no follow-up or confirmation has been provided since that date.
Sarma (2003)	Articles 7 and 9 re: author's son; Article 7 re: author and wife	Thorough and effective investigation into disappearance and fate; immediate release if still alive; adequate information from investigations; compensation; expediting of current criminal proceedings; prompt trial of those responsible	Author is said to have received confirmation that recommendation for compensation had been forwarded to the Attorney General, but had not received compensation at last communication. Author claims State has failed to effectively investigate claims and no further information provided by State party since 2005.
Jayawardena (2002)	Article 9(1)	Appropriate remedy	No further investigation provided. The State party provided additional protection as per the author's request made in 2004, but did not respond to the author's concerns for his safety in 2006. Dialogue considered ongoing but no information provided by the State party since 2006.