

## HUMAN RIGHTS COMMITTEE

### Jayawardena v. Sri Lanka

Communication No. 916/2000

22 July 2002

CCPR/C/75/D/916/2000

### VIEWS

*Submitted by: Mr. Jayalath Jayawardena*

*State party: Sri Lanka*

*Date of communication: 23 February 2000 (initial submission)*

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

Meeting on 22 July 2002,

Having concluded its consideration of communication No. 916/2000, submitted to the Human Rights Committee by Mr. Jayalath Jayawardena 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:

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

1. The author of the communication, is Mr. Jayalath Jayawardena, a Sri Lankan citizen, residing in Colombo, Sri Lanka. He claims to be a victim of violations by Sri Lanka of the International Covenant on Civil and Political Rights. The author does not invoke any specific provision of the Covenant, however, the communication appears to raise issues under article 9, paragraph 1, of the Covenant. He is not represented by counsel.

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

2.1 The author is a medical doctor and a member of the United National Party ("UNP") in Sri Lanka. At the time of his initial communication, he was an opposition Member of Parliament but in December 2001 his party obtained a majority in Parliament and he was appointed Minister of Rehabilitation, Resettlement and Refugees. From 1998, Mrs. Chandrika Bandaranaike Kumaratunga, the President of Sri Lanka, made public accusations, during interviews with the media, that the author was involved with the Liberation Tigers of Tamil Elam ("LTTE") and such allegations were given wide publicity by the "government-controlled" radio and television corporations. In addition, the same allegations appeared on the Daily News newspaper on 9 and 10 September 1998, and 5 January 2000, respectively.

2.2 On 3 January 2000, and during an interview broadcast over the state-owned television station, the President again accused the author of involvement with the LTTE. Two days later, a lawyer and leader of the All Ceylon Tamil Congress, who openly supported the LTTE, was assassinated by an unidentified gunman in Colombo. The author feared that he too would be murdered and that the President's accusations exposed him to many death threats by unidentified callers and to being followed by unidentified persons.

2.3 On 2 March 2000, the Secretary General of Parliament requested the Ministry of Defence to provide the author with the same security afforded to the Members of Parliament in the North-East of the country, as his work was concentrated in those provinces. He also stated that the author was in receipt of certain threats to his life and requested that he receive additional personal security. The Secretary General of Parliament confirmed in two letters to the author that he did not receive a response from the Ministry of Defence to his request. On 13 March 2000, the President accused the UNP of complicity with the LTTE in an interview published by the Far Eastern Economic Review.

2.4 On or around 15 March 2000, the author received two extra security guards, however they were not provided with "emergency communication sets" and the author was not provided with dark tinted glass in his vehicle. Such security devices are made available to all government Members of Parliament whose security is threatened, as well as providing them with more than 8 security guards.

2.5 In several faxes submitted by the author, he provides the following supplementary information. On 8 June 2001, a state-owned newspaper published an article in which it stated that the author's name had appeared in a magazine as an LTTE spy. After this incident, the author alleges to have received around 100 death threats over the telephone and was followed by several unidentified persons in unmarked vehicles. As a result of these calls, the author's family was in a state of "severe psychological shock." On 13 June 2001, the author made a complaint to the police and requested extra security, but this was not granted.

2.6 On 18 June 2001, the author made a statement to Parliament revealing the fact that his life and that of his family were in danger. He also requested the Speaker of the Parliament to refer his complaint to the "privileges committee." (1) Pursuant to his complaint to the Speaker a "select committee" (2) was set up to look into his complaint, however because of the "undemocratic prorogation to the parliament", this matter was not considered. (3)

2.7 In addition, the author made a complaint to the police against a Deputy Minister of the government who threatened to kill him. On 3 April 2001, the Attorney General instructed the "Director of Crimes of Police" to prosecute this Minister. However, on 21 June 2001, the Attorney General informed the Director of Crimes that he (the Attorney General) would have to re-examine this case again following representations made by the Deputy Minister's lawyer. The author believes that this is due to political pressure. On 19 June 2001, the author wrote to the Speaker of Parliament requesting him to advise the Secretary of the Ministry of Defence to provide him with additional security as previously requested by the Secretary General of Parliament.

2.8 On the following dates the President and the state-owned media made allegations about the author's involvement with the LTTE: 25 June 2001; 29 July 2001; 5 August 2001; 7 August 2001; and 12 August 2001. These allegations are said to have further endangered the author's life.

2.9 Furthermore, on 18 July 2001, the author alleges to have been followed by an unidentified gunman close to his constituency office. The author lodged a complaint with the police on the same day but no action was taken in this regard. On 31 August 2001, a live hand grenade was found at a junction near his residence. (4) During the parliamentary election campaign which ended on 5 December 2001, the author alleges that the President made similar remarks about the connection between the UNP and the LTTE.

## **Complaint**

3.1 The author complains that allegations made by the President of Sri Lanka on the state-owned media, about his alleged involvement with the LTTE, put his life at risk. He claims that such allegations are tantamount to harassment and resulted from his efforts to draw attention to human rights issues in Sri Lanka. He claims that he has no opportunity to sue the President as she is immune from suit.

3.2 The author claims that the State party did not protect his life by refusing to grant him sufficient security despite the fact that he was receiving death threats.

3.3 The author further claims that the State party failed to investigate any of the complaints he made to the police on the issue of the death threats received against him.

## **State party's submission on the admissibility and merits of the communication**

4.1 By letter of 6 September 2000, the State party made its submission on the admissibility of the communication and by letter of 3 July 2001, its submission on the merits. According to the State party, the author has not availed himself of any domestic remedies as required under article 2 of the Optional Protocol. It states that if the author believed that the President's allegations infringed his civil and political rights, there are domestic remedies available to him under the Constitution and the Penal Code of Sri Lanka, against the media, restraining it from publishing or broadcasting such information, or instituting proceedings against it. It also submits that, apart from the author's statement that the President is immune from suit, he has not claimed that he has no faith in the judicial system in Sri Lanka for the purposes of pursuing his rights and claiming relief in respect of the publication or

broadcasting of the material.

4.2 The State party contests that the author has been receiving death threats from unidentified callers and has been followed by unidentified persons, as there is no mention of him making such complaints to the domestic authorities. In this context, it also states that the author's failure to report such threats is an important factor in assessing his credibility.

4.3 On the merits, the State party submits that as a Member of Parliament and a medical practitioner, the author led a very open life, participating in television programmes relating both to the political as well as the medical field. He actively took part in political debates both in the television and the print media, without any indication of restraint, which would normally have been shown by a person whose life is alleged to be "under serious threat." In this regard, the State party submits that in response to the allegations made by the President, the author issued a denial, which was given an equivalent amount of television, radio and press coverage in both the government and private sectors.

4.4 The State party also submits that the fact that the author made no complaint to the domestic authorities about receiving death threats and did not pursue available legal remedies against the media restraining them from publication of material considered to be prejudicial to him, indicates that the author is engaged in a political exercise in international fora, to bring discredit to the Government of Sri Lanka rather than vindicating any human right which has been violated. According to the State party, the fact that the author failed to refer to the violation of any particular right under the Covenant would also confirm the above hypothesis.

4.5 Furthermore, it is submitted that there is no link between the assassination of the leader of the All Ceylon Tamil Congress, who was a lawyer, and the President's allegations about the author. It states that the President did not refer to the leader of this party in the interview in question and states that he had been openly supporting the LTTE for a long period of time. According to the State party, there are many lawyers who appear for LTTE suspects in Sri Lankan courts but who have never been subjected to any form of harassment or threat, and there have been no complaints of such a nature to the authorities.

4.6 Finally, the State party submits that the President of Sri Lanka, as a citizen of this country, is entitled to express her views on matters of political importance, as any other person exercising the fundamental rights of freedom of expression and opinion.

### **Comments by the author**

5.1 On the issue of admissibility, the author submits that his complaint does not relate to the Sri Lankan press nor the Sri Lankan police but to the President's allegations about his involvement with the LTTE. He submits that the President herself should be accountable for the statements made against him by her. However, as the President has legal immunity no domestic remedy exists that can be exhausted. The author quotes from the Sri Lankan Constitution,

30-(1) "There shall be a President of the Republic of Sri Lanka who is the head of the State, the head of the executive and of the Government and the Commander-in-Chief

of the Armed Forces.

35-(1) While any person holds office as President no proceedings shall be instituted or continued against him in any court or tribunal in respect of anything done or omitted to be done by him either in his official or private capacity."

5.2 With respect to the State party's submission that the author made no official complaint about the death threats and necessity for increased security, the author reiterates what attempts he made in this regard, stating that he made many complaints to the police and submits a copy of one such complaint, dated 11 January 2000.

5.3 The author adds that on 18 July 2001 the Speaker of the Parliament requested the Secretary of the Ministry of Defence to provide the author with increased security. Similarly, on 23 July 2001, the leader of the opposition also wrote to the Secretary with the same request. (5) In a letter, dated 27 July 2001, the Secretary informed the Leader of the Opposition that both of these letters were forwarded to the President for consideration. The author states that he does not expect to receive such increased security as the President is also the Commander-in-Chief of the Police and Armed Forces.

5.4 The author refers to observations by international organisations on this issue who referred to the allegations made by the President and requested her to take steps to protect the author's life, including the investigation of threats to his life. According to the author, the President did not respond to these request.

5.5 Finally, the author states that, the President did openly and publicly label the leader of the All Ceylon Tamil Congress a supporter of the LTTE but in any event he does not intend the Committee to investigate the circumstances of his death.

## **Issues and proceedings before the Committee**

### **Consideration of admissibility**

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its Rules of Procedure, decide whether or not the complaint is admissible under the Optional Protocol to the Covenant.

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

6.3 The Committee notes the author's claim that his rights were violated, as he received death threats following allegations made by the President on his involvement with the LTTE, and his claim that he has no remedy against the President herself, as she is immune from suit. The State party insists that the author could have taken a legal action against the media which broadcast or published the President's allegations. While the State party does not contest that, due to her immunity, the President

could not have been the subject of a legal action, it doesn't indicate whether the author had any effective remedies to obtain reparation for the eventual harm to his personnel security which the President's allegations may have caused. For these reasons the Committee finds that the author has exhausted domestic remedies, and this part of the communication is admissible. The Committee notes that this claim may raise issues under article 9, paragraph 1, of the Covenant.

6.4 In relation to the issue of the State party's failure to investigate his claims of death threats, the Committee notes the State party's argument that the author did not exhaust domestic remedies as he failed to report these complaints to the appropriate domestic authorities. From the information provided, the Committee observes that the author made at least two complaints to the police. For this reason, and because the State party has not explained what other measures the author could have taken to seek domestic redress, the Committee is of the view that the author has exhausted domestic remedies in this regard. The Committee notes that this claim may raise issues under article 9, paragraph 1, of the Covenant. The Committee finds no other reason to question the admissibility of this aspect of the communication.

6.5 In relation to the issue of the State party's failure to protect the author by granting him increased security the Committee notes the author's argument that the level of security afforded to him was inadequate and not at the level afforded to other Members of Parliament, in particular to Members of Parliament working in the North-East of the country. The Committee notes, that although the State party did not specifically respond on this issue, the author does affirm that he received "two extra security guards" but provides no further elaboration on the exact level of security afforded to him as against other Members of Parliament. The Committee, therefore, finds that the author has failed to substantiate this claim for the purposes of admissibility.

6.6 The Committee therefore decides that the parts of the communication which relate to the claim in respect of the President's allegations against the author, and the State party's failure to investigate the death threats against the author are admissible.

### **Consideration of the merits**

7.1 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.

7.2 In respect of the author's claim that the allegations made publicly by the President of Sri Lanka put his life at risk, the Committee notes that the State party has not contested the fact that these statements were in fact made. It does contest that the author was the recipient of death threats subsequent to the President's allegations but, on the basis of the detailed information provided by the author, the Committee is of the view that due weight must be given to the author's allegations that such threats were received after the statements and the author feared for his life. For these reasons, and because the statements in question were made by the Head of State acting under immunity enacted by the State party, the Committee takes the view that the State party is responsible for a violation of the author's right to security of person under article 9, paragraph 1, of the Covenant.

7.3 With regard to the author's claim that the State party violated his rights under the Covenant by failing to investigate the complaints made by the author to the police in respect of death threats he had received, the Committee notes the State party's contention that the author did not receive any death threats and that no complaints or reports of such threats were received. However, the State party has not provided any specific arguments or materials to refute the author's detailed account of at least two complaints made by him to the police. In the circumstances, the Committee concludes that the failure of the State party to investigate these threats to the life of the author violated his right to security of person under article 9, paragraph 1, of the Covenant.

8. 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 a violation by Sri Lanka of article 9, paragraph 1, of the Covenant.

9. Pursuant to article 2, paragraph 3(a), of the Covenant, the Committee concludes that the author is entitled to an appropriate remedy.

10. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognised the competence of the Committee to determine whether there has been a violation of 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 recognised 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 90 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the Committee's Views.

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\*\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Louis Henkin, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Mr. Patrick Vella and Mr. Maxwell Yalden.

The text of a partially dissenting opinion co-signed by Committee members Mr. Nisuke Ando, Mr. Prafullachandra Bhagwati, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, and Mr. Maxwell Yalden is appended to the present document.

[Done 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.]

## Notes

1. No further information is provided on this committee.

2. No further information is provided on this committee.
3. No further information has been provided by the author on this matter.
4. According to a newspaper article, provided by the author on this matter, an investigation was carried out and the officer-in-charge stated that the incident had nothing to do with the author.
5. The author draws the Committee's attention to the following paragraph of this letter, "Mr. Jayawardena has made several complaints to the local police and the IGP himself all of which have been to no avail. So much so that as recently as the 18th of July 2001 an unidentified gunman was found loitering outside his home. It is regrettable to note that in spite of all this no action has been taken by your Ministry to accede to the request of the Speaker."

**Individual opinion, partially dissenting, by Committee members Mr. Nisuke Ando, Mr. Prafullachandra Bhagwati, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, and Mr. Maxwell Yalden**

We share the Committee's view regarding the State party's failure to investigate the death threats against the author.

We disagree, however, on the Committee's decision that the author's claim of a violation of his right under article 9, paragraph 1, of the Covenant by the allegations by the President through the State owned media against him (see above paragraph 3.1), is admissible under the Optional Protocol. In our view the author has not exhausted domestic remedies.

As stated above, the author's allegations related to the allegations by the President through the State owned media, but the author has not explained why he failed to take legal action against the media or to go to the courts to stop any of those allegations made against him. The fact that the President as head of State enjoys personal immunity from suit does not mean that there was no procedure of redress against other state or state controlled organs. Therefore, in our view, this part of the communication is inadmissible under article 5, paragraph 2(b), of the Optional Protocol and should not have been dealt with in the merits.

Signed [Mr. Nisuke Ando]

Signed [Mr. Prafullachandra Bhagwati]

Signed [Mr. Eckart Klein]

Signed [Mr. David Kretzmer]

Signed [Mr. Rajsoomer Lallah]

Signed [Mr. Maxwell Yalden]