



**International covenant  
on civil and political  
rights**

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

**VIEWS**

**Communication No. 1373/2005**

|                                   |  |
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| <u>Submitted by:</u>              | Dissanayake, Mudiyansele Sumanaweera Banda (represented by counsel, Mr. Nihal Jayawickrama)                    |
| <u>Alleged victim:</u>            | The author   |
| <u>State Party:</u>               | Sri Lanka  |
| <u>Date of Communication:</u>     | 3 March 2005 (Initial submission)  |
| <u>Document references:</u>       | Special Rapporteurs rule 97 decision, transmitted to the state party on 17 March 2005 (not issued in document) |
| <u>Date of adoption of views:</u> | 22 July 2008   |

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

*Subject matter:* Detention of author following contempt of court proceedings

*Procedural issue:* None

*Substantive issues:* Arbitrary detention, unfair trial, no right to appeal, cruel inhuman and degrading treatment, forced or compulsory labour, not criminal offence under law, freedom of expression, right to vote and be elected, discrimination.

*Articles of the Covenant:* 7; 8, paragraph 3(b); 9, paragraph 1; 14, paragraphs 1, 2, 3 (a), (e) and (g), and 5; 15, paragraph 1; 19, paragraph 3; 25 (b); and 26.

*Article of the Optional Protocol:* 2

On 22 July 2008, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1373/2005.

[ANNEX]

**ANNEX**

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

concerning

**Communication No. 1373/2005\***

|                               |   |
|-------------------------------|---|
| <u>Submitted by:</u>          | Dissanayake, Mudiyansele Sumanaweera Banda (represented by counsel, Mr. Nihal Jayawickrama) |
| <u>Alleged victim:</u>        | The author  |
| <u>State Party:</u>           | Sri Lanka   |
| <u>Date of Communication:</u> | 3 March 2005 (Initial submission)   |

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

Meeting on 22 July 2008,

Having concluded its consideration of communication No. 1373/2005, submitted to the Human Rights Committee on behalf of Dissanayake, Mudiyansele Sumanaweera Banda 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**

1.1 The author of the communication is Mr. D.M. Dissanayake, a Sri Lankan citizen, residing in Sri Lanka. He claims to be a victim of violations by the State party of article 7; article 8, paragraph 3(b); article 9, paragraph 1; article 14, paragraphs 1, 2, 3 (a), (e) and (g), and 5; article 15, paragraph 1; article 19, paragraph 3; article 25; and article 26 of the International Covenant on Civil and Political Rights. He is represented by counsel, Mr. Nihal Jayawickrama.

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

1.2 The author requested interim measures on the basis that he would suffer irreparable damage if required to serve his entire sentence of two years of rigorous imprisonment. He suggested that interim measures might include a request that the author be granted “respite from the execution of the sentence of hard labour”. On 17 March 2005, the Special Rapporteur denied his request for interim measures on the ground that working in a print shop did not appear to come within the terms of article 8, paragraph 3 (b).

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

2.1 In February 1989, the author, a member of the Sri Lankan Freedom Party (SLFP), was elected to parliament. In 1994 and October 2000, he was re-elected and appointed Cabinet Minister in the Peoples Alliance (PA), the Government of Prime Minister (later President) Chandrika Kumaratunge, which was a coalition of the SLFP with several smaller parties. In 2001, differences of opinion arose within the government on a number of political issues. On 9 October 2001, the author and seven other members of the SLFP joined the opposition, the United National Party (UNP). On 5 December 2001, at the general election, the author was elected to Parliament on the National List of the UNP, which formed a coalition government. As the PA was now in the minority in Parliament, the President Kumaratunge, who remained leader of that party, was compelled to appoint the leader of the UNP (comprising the UNP and the Ceylon Workers Congress (CWC)), Ranil Wickremasinghe as Prime Minister. The President, appointed the Cabinet proposed by the new Prime Minister, and the author was appointed Minister of Agriculture.

2.2 According to the author, the peculiar structure of government made good governance difficult. In 2003, the President referred to the Chief Justice for an opinion on questions relating to the exercise of defence powers between the President and the Minister of Defence. On 5 November 2003, a news release from the Presidential Secretariat announced the opinion of the Supreme Court, to the effect that “the plenary executive power including the defence of Sri Lanka is vested and reposed with the President”, and that “the said power vested in the President relating to the defence of Sri Lanka under the Constitution includes the control of the armed forces as commander-in-chief of the forces”. On 7 February 2004, the President dissolved Parliament and set a date for the next general election. Following this election on 2 April 2004, the United Peoples Freedom Alliance (UPFA) (which comprised of the SLFP and the JVP) led by the President formed a minority government in Parliament. The author, who had stood for the first time as a member of the UNP, was re-elected.

2.3 On 3 November 2003, pursuant to the President’s request to the Chief Justice for an opinion on the exercise of defence powers between the President and the Minister of Defence, the author gave a speech during a public meeting in which he was reported in the press as saying that he and like-minded members of Parliament ‘*would not accept any shameful decision the Court gives*’. He was charged under Article 105 (3) of the Constitution with contempt of court<sup>1</sup>.

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<sup>1</sup> According to Article 105 (3), “The Supreme Court of the Republic of Sri Lanka and the Court of Appeal of the Republic of Sri Lanka shall each be a superior court of record and shall have all the powers of such court including the power to punish for contempt of itself, whether committed in the court itself or elsewhere, with imprisonment or fine or both as the court may deem fit.”

He was served a “Rule”<sup>2</sup>, dated 7 April 2004, requiring him to show “why he should not be punished under article 105(3) of the Constitution” for the offence of contempt of the Supreme Court. He was tried before the Supreme Court on 7 May and 14 September 2004. The Chief Justice presided over the case, despite the author’s objection<sup>3</sup>.

2.4 On 7 May 2004, at the author’s first appearance in court, the Rule was read out and the Chief Justice asked him whether he had made the speech attributed to him therein. On the second occasion, his counsel was asked whether he admitted to having made portions of the speech, which on the previous occasion he had denied or stated he did not recall having made. The Chief Justice then requested officials of the television station to play back the recording of what was called a “copy of the original”. On the author’s instructions, counsel informed the court that for the purpose of the proceedings, he would admit having made the entire statement attributed to him. At this point, the Chief Justice declared that all that was left were questions of a legal nature, namely, whether the statement admitted by him amounted to contempt of court; and if so, how the court should deal with it.

2.5 The author states that no witnesses were called to give evidence. Neither the persons who made the original complaint nor the person/s who allegedly recorded the speech were called as witnesses or were submitted for cross-examination. The original video tape was not produced in evidence. The procedure was inquisitorial in nature and contrary to the provisions of section 101 of the Evidence Ordinance which requires that, “[w]hoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist”, and Article 13 (5) of the Constitution which states that “every person shall be presumed innocent until he is proved guilty”.

2.6 On 7 December 2004, the Court found the author guilty of contempt of court and sentenced him to two years of “rigorous imprisonment”. The author had no right of appeal from the Supreme Court. The judgement refers to a charge of contempt against the author in 2000 for which he was given a warning and admonition by the Supreme Court, but was not convicted. In the judgement, the Chief Justice commented adversely on the author’s conduct, due to his failure to admit at the outset that he had made the full statement in question and stated that he had displayed “a lack of candour”. The author began serving his sentence on the same day in the Welikade Prison and was assigned to work in its printing room. According to the author, the Supreme Court did not have the power to sentence him to hard labour under Sri Lankan law. According to section 2 of the Interpretation Ordinance, which applies to the Constitution, “(x) rigorous imprisonment, “simple imprisonment”, and “imprisonment of either imprisonment description” shall have the same meaning as in the Penal Code, and “imprisonment” shall mean simple imprisonment<sup>4</sup>. Shortly after the author’s committal to prison, he was disqualified from being an elector and Member of Parliament pursuant to article 66(d) of the Constitution. Such a

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<sup>2</sup> The author provides no further details on the definition of a “Rule”.

<sup>3</sup> According to the author, his lawyer met with the Chief Justice in his chambers prior to the hearing informing him that he objected to his participation in the hearing and asking him to recuse himself. The Chief Justice refused to do so.

<sup>4</sup> The Penal Code of Sri Lanka (s. 30) states that imprisonment is of two descriptions: rigorous, that is, with hard labour; and simple. The Supreme Court purported to act under Article 105 (3) of the Constitution which refers to “imprisonment or fine”.

disqualification continues for a period of seven years commencing from the date on which the prisoner has served his prison sentence; in the author's case for a period of nine years in all.

2.7 According to the author, the composition of the Supreme Court which heard his case, and included the Chief Justice, was neither impartial nor independent. He argues that the Chief Justice is a personal friend of the President, and that she appointed him as Chief Justice, superseding five more senior judges: he had only been a judge for four months. He refers to a statement made by the former UN Special Rapporteur on the Independence of Judges and Lawyers, upon the appointment of the Chief Justice, in which he expressed his concern at the haste of his appointment, particularly in light of the fact that there were at that time two petitions on charges of corruption pending against him. According to the author, every "politically sensitive" case in which the former President, her government or party appear to have an interest, including the author's case, has been listed before the Chief Justice, sitting more often than not with the same group of judges of the Supreme Court, many of whom had served under him when he was the Attorney General. The author states that he is unable to cite a judgement of the Chief Justice in a "politically sensitive" case which was favourable to the author's party (UNP). In addition, he states that a parliamentary motion calling for his removal, which was submitted to the Speaker by the UNP in November 2003, was signed by the author. The Chief Justice was aware of this motion and of the author's co-signature.

2.8 According to the author, the charges against him were politically motivated. He states that the Chief Justice was biased against him. In this regard, he refers to the fact that on 10 March 2004, at a crucial stage in the general election, the Chief Justice informed the press that the judges of the Supreme Court were examining a speech made by the author with a view to charging him for contempt. He reminded the press that this was not the first occasion the Supreme Court would be considering such a charge against the author. On 16 March 2004, a newspaper stated that the author had been charged with contempt. According to the author, the Rule was not issued by the Supreme Court until 7 April, after the election, and the Chief Justice took no steps to contradict these reports. In July 2004, the author submits that newspaper reports alleged that the Chief Justice had been caught in a compromising position with a woman in a car park. The Chief Justice publicly dismissed the allegation, stating that it was part of a campaign to 'discredit him and was related to certain cases pending before the Court'. The author states that this was a clear reference to him, as his case was the only politically sensitive case pending before the Supreme Court at that time.

### **The complaint**

3.1 The author claims that his sentence was disproportionate to his alleged offence, and refers to other decisions of the Supreme Court dealing with defamation in which lighter penalties were handed down for more serious contempt<sup>5</sup>. He submits that a sentence of two years rigorous imprisonment imposed upon him, being the first reported instance in over a hundred years when

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<sup>5</sup> According to the information provided, the only other time the Supreme Court issued a sentence of "rigorous imprisonment" was in the case of Fernando, where the convict was sentenced to one year of rigorous imprisonment. This communication no. 1189/2003 was considered by the Committee, on 31 March 2005, and it found a violation of article 9, paragraph 1, for arbitrary deprivation of liberty.

the Supreme Court imposed a sentence of such excessive length and rigour, is a grossly disproportionate sentence, and amounts to cruel, inhuman and degrading punishment, in violation of article 7.

3.2 The author claims that, as he was required to perform hard labour in prison in pursuance of a sentence which the court was not competent in law to impose (see para. 2.6 above), he was required to perform forced or compulsory labour in violation of article 8, paragraph 3, of the Covenant. He claims a violation of article 14, paragraph 1, by reason of the Chief Justice's involvement in his case who, he claims, was neither impartial nor independent.

3.3 The author claims a violation of article 14, paragraph 2, as he was not presumed innocent and the burden of proof was placed on him rather than the prosecution. He refers to the facts set out in paragraph 2.4 and 2.5 above. He submits that while trial by summary procedure may be permissible where the alleged contempt has been committed "in the face of the court", it is wholly inappropriate where the charge is based, not on the judge's observations, but on a petition submitted by a individual in respect of an alleged offence which had taken place several months previously, to which the petitioner was not a party, with which he or she was not concerned, and of which no member of the court had any knowledge until the petition was received. Where such an offence is tried summarily, the burden of proof is imposed on the accused to establish that the alleged act was not committed by him<sup>6</sup>.

3.4 The author claims a violation of article 14, paragraph 3 (a), as he was not informed of the nature and cause of charges against him. The Rule which was served upon him did not refer to any particular sentence or sentences of his statement (of around twenty sentences in all), which was/were suppose to have amounted to contempt of court. The Rule did not indicate the specific nature of the contempt with which he was charged and he was not informed in court either of its specific nature. He claims a violation of article 14, paragraph 3 (e), as no witnesses were called to testify against him, and no witnesses were tendered for cross-examination by counsel appearing for the author. He claims a violation of article 14, paragraph 3 (g), due to the manner in which he was questioned by the Chief Justice on the contents of the speech he was alleged to have made, the coercion which he was subjected to by the Chief Justice, and the adverse inferences which the Chief Justice drew from his reluctance to provide evidence against himself (para. 2.4 and 2.6).

3.5 The author claims that because he was tried at first instance in the Supreme Court, rather than the High Court, he had no right to appeal against his conviction and sentence, in violation of his rights under article 14, paragraph 5. He argues that if there had been an appellate tribunal competent to review the judgement, there were serious misdirections of law and fact upon which he would have based an appeal. He sets out these misdirections in detail.

3.6 The author claims a violation of article 15, paragraph 1, as he was convicted of a criminal offence which did not constitute a criminal offence under law, and was sentenced to two years rigorous imprisonment when no finite sentence is prescribed by law. He invokes Article 105 (3) of the Constitution, upon which he was convicted for the offence of contempt of court. He refers

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<sup>6</sup> In support of his view, the author refers to a judgement of the Constitutional Court of South Africa, in the case of State v. Mamabolo [2002] 1 LRC 32.

to the article itself which he argues does not create the offence of “contempt”, nor defines the term, nor sets out what acts or omissions would constitute it. It merely declares that among the powers of the Supreme Court is the, “power to punish for contempt of itself, whether committed in the court or elsewhere”. He also argues that with reference to U.K. jurisprudence, it would appear that the type of contempt he was punished with was that of “scandalising the court”, which is not an act declared to be an offence under any law of the State party. In addition, he argues that in light of the fact that Article 111C(2) of the Constitution has prescribed punishment of up to one year imprisonment for the substantive offence of interference with the judiciary, it would be irrational to suggest that the words “the power to punish for contempt with imprisonment or fine”, means that the court’s powers to impose a prison sentence is unlimited.

3.7 The author claims that his right to freedom of expression under article 19 has been violated, as the restrictions imposed on his right to freedom of expression through the application of the contempt of court offence in this instance did not satisfy the ‘necessity’ requirement in article 19, paragraph 3. According to the author, the portion of his speech relating to the President’s request was political in nature, related to a subject which was topical, and was couched in language that was appropriate to the occasion. He claims that his expulsion from Parliament, his exclusion for a period of nine years from participating in the conduct of public affairs, and particularly from performing his functions as National Organiser of the principal parliamentary opposition party in a year in which a presidential election is due to be held, and his disqualification for a period of nine years from voting or standing for election was grossly disproportionate, and not justifiable by reference to reasonable and objective criteria, thus violating his rights under article 25.

3.8 Finally, the author claims a violation of article 26, for failure of the Supreme Court to apply the law equally or to provide equal protection of the law without discrimination. He argues that the Supreme Court failed to take any action against either the Independent Television Network or the Sri Lankan Rupavahini Corporation, both of which had broadcast his speech.

### **The State party’s submission on admissibility and merits**

4.1 On 14 October 2005, the State party contested the author’s claims. On the facts, it states that the Supreme Court, in addition to its original and appellate jurisdiction, has a consultative jurisdiction whereby the President may obtain the opinion of the Court on a question of law or fact which has arisen or is likely to arise and is of public importance. It submits that at the time of making the statement in question the author was a Cabinet Minister and not a civilian, which added to the impact of the statement. It highlights the previous charge of contempt against the author, when he admitted stating that, “they will close down Parliament and if necessary close down courts to pass this Constitution” and “if State judges do not agree with the implementation of the Constitution they could go home”. The author was a senior Cabinet Minister when he had made these statements. In light of his apology and the fact that he had no previous criminal record, he was not convicted. In the current case, the Supreme Court specifically stated in its judgement that as its earlier leniency had had no impact on the author’s behaviour, a “deterrent punishment of two years rigorous imprisonment” was appropriate. Considering these elements, the State party submits that the cases cited by the author are irrelevant and the sentence cannot be considered disproportionate. For these reasons, the State party did not violate article 7.



4.2 As to the allegation under article 8, paragraph 3, and the author's claim that according to the provisions of the Interpretation of Statutes Ordinance the word "imprisonment" denotes only "simple imprisonment", the State party submits that this Ordinance cannot be used to interpret the Constitution but only Acts of Parliament. The Constitution may only be interpreted by the Supreme Court, which has interpreted "imprisonment" to mean either "rigorous" or "simple imprisonment". It also notes that article 8, paragraph 3 (a), should be read with article 8, paragraph 3 (b), which states that the former paragraph should not be held to preclude the performance of hard labour.

4.3 As to the claims under article 14, paragraph 1, the State party denies the allegations against the Chief Justice and states that it will refrain from commenting on statements made against him which are unsubstantiated. A judgement of the Supreme Court may only be handed down by a panel of at least three judges. In this case, it consisted of five judges who rendered a unanimous finding on guilt and sentence. The author was represented by senior counsel and the hearing was in public. He admitted having made the statement, and it was left to the Supreme Court to consider whether the statement was contemptuous in whole or in part. The author had used the Sinhalese word "balu" in his statement to describe the Judges of the Supreme Court; a word which means dog/s and is thus extremely derogatory.

4.4 As to the claims of a violation of article 14, paragraphs 2, 3 (e) and (g), the State party submits that the author's admission that he had made the statement in question meant that these provisions were not violated. Had the author refuted having made the statement, the onus would then have been on the prosecution to prove that such statement was in fact made. As to paragraph 3 (e), having admitted making the statement, there was no necessity for the prosecution to hear evidence of witnesses to prove that the statement had indeed been made. As to paragraph 3 (g), the author's admission could not be construed as having to testify against himself or to confess guilt. The author and his counsel, having examined the evidence available took a considered decision to admit the entire statement.

4.5 As to article 14, paragraph 3 (a), the State party submits that the author was served with a document containing the relevant material long before the commencement of the proceedings. He was served with the charges beforehand and the statement was read out in open court in a language he understood. He was represented and neither the author nor counsel indicated that they failed to understand the nature of the charge. Counsel was given the opportunity to view a video clip of the author making the statement in question and to advise the author prior to admitting that he made the statement.

4.6 The State party denies that neither article 15, paragraph 1, nor article 14, paragraph 5, were violated. It confirms that the Supreme Court decision could not have been reviewed. Under Article 105 (3) of the Constitution it is vested with the power, as a superior court of record, to punish for contempt of itself whether committed within the court or elsewhere. It is clear under this article that contempt whether committed within the court itself or elsewhere is an offence. If it were not so then the power given to the Supreme Court would be futile. Any other interpretation would be unrealistic and unreasonable. Further, it submits that contempt could be considered criminal, according to "the general principles of law recognised by the community of nations (article 15, paragraph 2)."

4.7 On the article 19 claim, the State party submits that a restriction preventing incidents of contempt of court is a reasonable restriction, which is necessary to preserve the respect and reputation of the court, as well as to preserve public order and morals. Chapter iii of the Sri Lankan Constitution provides that the exercise of the right to freedom of expression is subjected to restrictions as may be prescribed by law which includes contempt of court. Article 89 (d) of the Constitution, “disqualifies a person who is or had during the period of seven years immediately preceding completed serving a sentence of imprisonment (by whatever name) for a term not less than six months after conviction by any court for an offence punishable with imprisonment for a term not less than two years...” The State party argues that preventing a person convicted of such a crime from being an elector or elected as a Member of Parliament could not be construed as an unreasonable restriction for the purposes of article 25 of the Covenant.

4.8 As to article 26, the State party submits that the contention that the television stations and the person who made the contentious statement be considered as equal is untenable. In addition, the author had already been warned and admonished for a previous charge of contempt of court, and thus cannot expect to be treated equally to a person who is brought before a court for the first time.

4.9 The State party submits that it has no control over the decisions of a competent court, nor can it give directions with regard to future judgements of a court. Upon signing the Optional Protocol, it was never intended to concede the competence of the Committee to express views on a judgement given by a competent court in Sri Lanka. It denies that there was any political or personal bias of the Chief justice towards the author.

#### **Author’s comments on State party’s submission**

5. On 9 November 2005, the author reiterated his claims and submits that the State party did not respond to many of his arguments. With regard to its arguments on article 8, paragraph 3, he submits that the Interpretation Ordinance explicitly states that it applies to the Constitution and the fact that the Supreme Court is vested with the power to interpret the Constitution does not mean that in exercising that power it can ignore the explicit provisions of the Ordinance. As to the claim that the context of the statement in question was to refer to judges of the Supreme Court as “dogs”, the author refers the Committee to the translation of the words in question by the Supreme Court itself as “disgraceful decision”. At no stage during the proceedings did the Attorney General or the Court itself claim that the author had referred to the Judges of the Supreme Court as “dogs”. With respect to the State party’s reference to article 15, paragraph 2, of the Covenant, the author submits that this provision was intended as a confirmation of the principles applied by the war crimes tribunals established after the Second World War.

#### **Author’s supplementary comments**

6.1 On 31 March 2008, on instructions from the Special Rapporteur on New Communications, the Secretariat requested the author to confirm whether a claim of article 9, paragraph 1, was implicit in his complaint, and to provide it with information on his release. On 6 April 2008, the author confirms that a claim of a violation of article 9, paragraph 1, is implicit in each of the violations claimed in his initial submission. He refers to the Committee’s Views in *Fernando v.*

*Sri Lanka*<sup>7</sup>, which were adopted three weeks after the present communication was submitted to the Committee, and in which the Committee found a violation of article 9, paragraph 1, for the arbitrary deprivation of liberty of the author by an act of the judiciary. The author also refers to the criteria by which the UN Working Group on Arbitrary Detention determines whether a deprivation of liberty is arbitrary - “when the complete or partial infringement of international standards relating to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character”, and “when such detention is the result of judicial proceedings consequent upon, or a sentence arising from, the exercise by an individual of the right to freedom of opinion and expression guaranteed by article 19 of the Covenant”.

6.2 The author submits that, on 15 February 2006, the President remitted the remainder of his sentence and he was released from prison, about six to eight weeks ahead of the day on which he would ordinarily have been entitled to be released. About two or three weeks before his release, the Speaker of Parliament ruled that the author had forfeited his seat in Parliament to which he had been elected for a six year term in April 2004, because he had absented himself from parliament for a continuous period of three months. The President did not grant a pardon (which he could have done under paragraph 2 of article 34 of the Constitution) which would have removed the disqualification to vote or seek election, which the author is subject to for seven years from the completion of his prison sentence, i.e. until April 2013.

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

### **Consideration of admissibility**

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant. The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the matter is not being examined under another procedure of international investigation or settlement.

7.2 As to the claims of violations of articles 7, 8, paragraph 3 (b), 15, paragraph 1, and 26, of the Covenant, the Committee is of the view that these claims have not been substantiated, for purposes of admissibility, and that they are therefore inadmissible under article 2 of the Optional Protocol.

7.3 As to the remaining claims of violations of the provisions of article 14; article 9, paragraph 1; article 19; and article 25(b), the Committee considers these claims are sufficiently substantiated and finds no other bar to their admissibility.

### **Consideration of the merits**

8.1 The Human Rights Committee has considered the present communication in light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

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<sup>7</sup> Communication No. 1189/2003, Views adopted on 31 March 2005,

8.2 The Committee recalls its observation, in previous jurisprudence<sup>8</sup>, that courts notably in Common Law jurisdictions have traditionally exercised authority to maintain order and dignity in court proceedings by the exercise of a summary power to impose penalties for "contempt of court." In this jurisprudence, the Committee also observed that the imposition of a draconian penalty without adequate explanation and without independent procedural safeguards falls within the prohibition of "arbitrary" deprivation of liberty, within the meaning of article 9, paragraph 1, of the Covenant. The fact that an act constituting a violation of article 9, paragraph 1, is committed by the judicial branch of government cannot prevent the engagement of the responsibility of the State party as a whole.

8.3 In the current case, the author was sentenced to two years rigorous imprisonment for having stated at a public meeting that he would not accept any "disgraceful decision" of the Supreme Court, in relation to a pending opinion on the exercise of defence powers between the President and the Minister of Defence. As argued by the State party, and confirmed on a review of the judgement itself, it would appear that the word "disgraceful" was considered by the Court as a "mild" translation of the word uttered. The State party refers to the Supreme Court's argument that the sentence was "deterrent" in nature, given the fact that the author had previously been charged with contempt but had not been convicted because of his apology. It would thus appear that the severity of the author's sentence was based on two contempt charges, of one of which he had not been convicted. In addition, the Committee notes that the State party has provided no explanation of why summary proceedings were necessary in this case, particularly in light of the fact that the incident leading to the charge had not been made in the "face of the court". The Committee finds that neither the Court nor the State party has provided any reasoned explanation as to why such a severe and summary penalty was warranted, in the exercise of the Court's power to maintain orderly proceedings, if indeed the provision of an advisory opinion can constitute proceedings to which any summary contempt of court ought to be applicable. Thus, it concludes that the author's detention was arbitrary, in violation of article 9, paragraph 1.

8.4 The Committee concludes that the State party has violated article 19 of the Covenant, as the sentence imposed upon the author was disproportionate to any legitimate aim under article 19, paragraph 3.

8.5 As to the claim of a violation of article 25 (b), due to the prohibition on the author from voting or from being elected for seven years after his release from prison, the Committee recalls that the exercise of the right to vote and to be elected may not be suspended or excluded except on grounds, established by law, which are objective and reasonable. It also recalls that "if a conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence"<sup>9</sup>. While noting that the restrictions in question are established by law, the Committee notes that, except for the assertion that the restrictions are reasonable, the State party has provided no argument as to how the restrictions on the author's right to vote or stand for office are proportionate to the offence and sentence. Given that these restrictions rely on the author's conviction and sentence, which the Committee has found to be arbitrary in violation of article 9, paragraph 1, as well as the fact that

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<sup>8</sup> *Fernando v. Sri Lanka*, supra

<sup>9</sup> General Comment No. 25 [57]: The right to participate in public affairs, voting rights and the right of equal access to public service (Article 25), CCPR/C/21/Rev.1/Add.7, para. 14.

the State party has failed to adduce any justifications about the reasonableness and/or proportionality of these restrictions, the Committee concludes that the prohibition on the author's right to be elected or to vote for a period of seven years after conviction and completion of sentence, are unreasonable and thus amount to a violation of article 25(b) of the Covenant.

8.6 In light of the finding of violations of articles 9, paragraph 1, 19, and 25 (b) in this case, the Committee need not consider whether provisions of article 14 may have any application to the exercise of the power of criminal contempt.

9. 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 State party has violated article 9, paragraph 1; article 19; and article 25 (b), of the International Covenant on Civil and Political Rights.

10. 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 the restoration of his right to vote and to be elected, and to make such changes to the law and practice, as are necessary to avoid similar violations in the future. The State party is under an obligation to avoid similar violations in the future.

11. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2, of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the Committee's Views.

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

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