

**QUESTIONNAIRE RELATED TO
THE RIGHT OF ANYONE DEPRIVED OF HIS OR HER LIBERTY BY
ARREST OR
DETENTION TO BRING PROCEEDINGS BEFORE COURT, IN ORDER THAT
THE COURT MAY DECIDE WITHOUT DELAY ON THE LAWFULNESS OF
HIS OR HER DETENTION AND ORDER HIS OR HER RELEASE IF THE
DETENTION IS NOT LAWFUL**

(1)

- (a) If your State is a party to the International Covenant on Civil and Political Rights, how is Article 9(4) of the Covenant incorporated into your domestic legislation? Please provide reference to the specific provisions including their wording and date of adoption.

Yes.

Article 13(2) of the Constitution which was adopted in 1977 states;

Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the Judge of the nearest competent Court according procedure established by law and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such Judge made in accordance with procedure established by law. A person whose rights enshrined in Article 13(2) has been violated can invoke the Fundamental Rights jurisdiction of the Supreme Court by filing a Fundamental Rights violation application under Article 126 of the Constitution.

- (2) Does this mechanism apply to all forms of deprivation of liberty, such as administrative detention, including detention for security reasons, involuntary hospitalization, immigration detention or any other reason?

Yes.

The Constitutional provision at Article 13 does not mention any particular type of detention and refers to deprivation of liberty as a result of being in custody, detained or otherwise.

- (3) Is the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before Court available for individuals subjected to preventive detention measures?

~~No.~~ Yes

As mentioned at Q.(1) Article 13(2) of the Constitution which speaks of deprivation of personal liberty does not speak of any specific form of detention and thereby applies to all forms of detention.

- (4) Does this mechanism provide for any particular remedies? In particular, does the mechanism provide for release and compensation for unlawful detention?

Yes.

When a Fundamental Rights violation is being inquired by the Supreme Court, if the Court is of the view that the detention is unlawful Court can order the release of the detainee and order compensation.

- (5) Are there persons other than the detainee who can initiate the procedure on behalf of the detainee under your countries domestic law?

Yes.

Under Article 126 of the Constitution the detainee or an Attorney-at-Law on his behalf can initiate Fundamental Rights procedure.

- (6) What are the formal requirements and procedure for a detainee to invoke the right to bring proceedings before Court, in order that the Court may decide without delay on the lawfulness of the detention? Please cite relevant domestic legislation.

For the Supreme Court to exercise its Fundamental Rights jurisdiction vested in it by Article 126 of the Constitution there should be a question relating to the infringement or imminent infringement by executive or administrative action.

- (7) Does the legislation provide for a time limit for submitting such application to the Court? If so, please indicate what is the maximum time in the number of :

1 month

- (8) Are there any major decisions of your country's constitutional or Supreme Courts concerning the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before Court?

Yes.

List of Cases:

- Mrs Sita Gunasekera v A.T.De Fonseka & others 75 NLR 246
- Sirisena & Others v Earnest Perera & Others 1991 (2) SLR 97
- Heenmenike v The Commandant R.D.F Camp & others 1995 (1) SLR 242
- Murin Fernando v Sergeant Sugathadasa and seven others 1997 (1) SLR 281
- Vinayagamoorthy, Attorney-at-Law (On behalf of Wimalenthiran) v The Army Commander & others 1997 (1) SLR 113
- Sunil Rodrigo (On behalf of B Sirisena Cooray) v Chandrananda De Silva & others 1997 (3) SLR 265
- Gnanamuththu v Military Officer Ananda & Others 1999(2) SLR 213
- Dhanapala Fernando v Attanayake OIC Kandana Police Station & others 2003 (1) SLR 196
- Amarasena & another v Jayaratnem, OIC Mt Lavinia Police Station & others 2003 (1) SLR 385
- Machchavallavan v OIC Army Camp & others 2005 (1) SLR 341
- Bandula Samarasekera v Vijitha Alwis OIC Ginigathhena 2009 (1) SLR 213