



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY
STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT**

SRI LANKA*

Addendum

**Comments by the Government of Sri Lanka on the
Concluding Observations of the Human Rights Committee**

[17 October 2007]

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- In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

(I) Provisions of Chapter III of the Constitution

The Government of Sri Lanka is in the process of enacting enabling legislation to give effect to the certain articles in the ICCPR that are not provided for in Chapter III of the Constitution. The Bill that was presented to Parliament in this regard was passed by Parliament on 10 October 2007.

Other issues relating to validity of existing laws, notwithstanding their incompatibility with the provisions of the Constitution relating to fundamental rights [Article 16 (1)] and the limitation of one month, to institute an application for infringement or imminent infringement of fundamental rights, need to be addressed through a comprehensive constitutional reform package.

(II) Full implementation of the right to life and physical integrity of all persons

The Constitution of Sri Lanka, in Article 11, guarantees that no person shall be subjected to torture cruel, inhuman or degrading treatment or punishment while Article 13 (4) of the Constitution provides that, no person shall be punished with death or imprisonment except by order of a competent court, made in accordance with procedure established by law.

The right to life has not been expressly recognized under the Constitution. However, the Supreme Court of Sri Lanka in several important fundamental rights actions, (**Silva Vs Iddamalgoda, 2003 (2) SLR, 63. Wewalage Rani Fernando and others Vs OIC, Minor Offences, Seeduwa Police Station, Seeduwa and eight others, SC (FR) No. 700/2002, SCM 26/07/2004**) in recent times has implicitly recognized the right to life. Thus, the provisions of Chapter III of the Constitution has been creatively interpreted by the Supreme Court on these occasions and recognized this right as an implied right guaranteed under the Constitution.

The Supreme Court in interpreting Article 13 (4) of the Constitution, which provides that no person shall be punished with death or imprisonment except by an order of a competent Court, recognized and asserted the right to life of a person or the right not to be deprived of life arbitrarily.

In (**Silva Vs Iddamalgoda, 2003 (2) SLR, 63,**) the Supreme Court held that, “Article 11 and 13 (4) by necessary implication recognize the right to life. Hence if a person died by reason of torture or unlawful death (by the executive) the right of any person to complain against violation of a fundamental right guaranteed by Article 17 read with Article 126 (2) should not be interpreted to make the right illusory; but Article 126 (2) should be interpreted broadly especially in view of Article 4(d) which requires the court to “respect, secure and advance” fundamental rights.”

The interpretation of the concept of Right to life, was further advanced to include the right not to be “disappeared” in a judgment of the Supreme Court (**Kanapathipillai Machchavalan Vs OIC, Army Camp, Plantain Point, Trincomalee and Others, SC Appeal No. 90/2003, SC (Spl) L.A. No. 177/2003, SCM 31.03.2003**).

In *Kanapathipillai Machchavalan Vs OIC, Army Camp, Plantain Point, Trincomalee and Others*, SC Appeal No. 90/2003, SC (Spl) L.A. No. 177/2003, SCM 31.03.2003, whilst granting leave to appeal from the decision of the Court of Appeal dismissing an application of Habeas Corpus, the Supreme Court decided that at the time when the Court of Appeal has made its order, there has been prima facie evidence of an infringement of the fundamental rights of the corpus under Article 13 (4) of the Constitution for which the State or a State officer was liable, necessitating therefore a referral of the case by the Court of Appeal to the supreme Court under Article 126 (3) of the Constitution.

Therefore, the right to life in the present context is part of the rights recognized and guaranteed under the provisions of the Constitution, according to the interpretation placed by the Supreme Court of Sri Lanka.
