



Cornell Law School
Cornell Center on the Death Penalty Worldwide



**Sri Lanka's Compliance with the Convention on the Elimination of All Forms of
Discrimination Against Women
Suggested List of Issues Relating to the Death Penalty**

Submitted by The Advocates for Human Rights
a non-governmental organization in special consultative status with ECOSOC since 1996
The World Coalition Against the Death Penalty

and
The Cornell Center on the Death Penalty Worldwide
for the
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The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty is a volunteer-based non-government organization committed to strengthen the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

The Cornell Center on the Death Penalty Worldwide is a US-based research, advocacy, and training center focused on capital punishment and international law. It publishes reports and manuals on death penalty issues, provides transparent data on death penalty laws and practices around the world, trains capital lawyers in best practices, and engages in targeted advocacy and litigation. Its staff and faculty advisors have collectively spent more than eight decades representing hundreds of prisoners facing the death penalty. In 2019 it was awarded the World Justice Challenge Award in recognition for its work on behalf of death-sentenced prisoners in Malawi.

EXECUTIVE SUMMARY

1. Sri Lanka acknowledges itself as a de facto abolitionist state,¹ and it carried out its last execution in 1976.² Despite the country's de facto abolition status, Sri Lankan courts continue to sentence people to death; the moratorium is in effect only by virtue of the President's occasional initiatives to commute death sentences. Moreover, the country has expanded the applicability of the death penalty to additional offenses not limited to the most serious crimes, such as drug-related offenses.
2. In Sri Lanka, there were at least twelve women under sentence of death as of November 2022.³ Between 2017 and 2021, Sri Lankan courts sentenced twenty-five women to death. In Sri Lanka, women on death row are at risk of gender-based violence. Female prisoners live in tiny cells, with thin mats to sleep on, no access to hygiene products, no ventilation, and extremely limited visitation.⁴ Women held in detention are able to obtain access to sanitary napkins only by doing washing or other work inside the prison.⁵

Sri Lanka fails to uphold its obligations under the Convention on the Elimination of All Forms of Discrimination Against Women

I. Sri Lanka does not limit the death penalty to the most serious crimes, continues to sentence women to death, and is at risk of resuming executions.

3. The Sri Lankan Constitution authorizes the death penalty "by order of a competent court, made in accordance with procedure established by law."⁶ Similarly, any person charged with an offense is entitled to "a fair trial by a competent court"⁷
4. Sri Lankan law does not limit the death penalty to the most serious crimes. Under the penal code, the death penalty is an available sentence for offences such as waging war against the state, including attempts and abetting such actions,⁸ mutiny of an officer in the military,⁹ knowingly giving false evidence knowing that it is likely to result in the punishment of death and such false evidence results in the conviction of an innocent person,¹⁰ murder,¹¹ and abetting

¹ United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Sri Lanka Addendum*, U.N. Doc. A/HRC/22/16/Add.1, ¶ 2.2.

² *Call to Resolve fate of 461 Sri Lanka death row inmates*, BBC News, (Apr. 25, 2013), <http://www.bbc.com/news/world-asia-22290016>.

³ World Coalition Against the Death Penalty, *Reflecting on the links between the death penalty and gender-based violence*, (accessed Jan. 25, 2023), <https://worldcoalition.org/2022/11/25/reflecting-on-the-links-between-the-death-penalty-and-gender-based-violence/> (hereinafter referred to as "Death penalty and gender-based violence").

⁴ Death penalty and gender-based violence.

⁵ International Committee of the Fourth International, *Human rights study exposes brutal conditions in Sri Lankan prisons*, (accessed Jan. 25, 2023), <https://www.wsws.org/en/articles/2021/01/26/pris-j26.html> (hereinafter referred to as "Sri Lankan prisons").

⁶ Constitution of Sri Lanka ch. III, art. 13 (4). Also available online at <https://www.parliament.lk/files/pdf/constitution.pdf>.

⁷ Constitution of Sri Lanka ch. III, art. 13 (4). Also available online at <https://www.parliament.lk/files/pdf/constitution.pdf>.

⁸ Sri Lanka Penal Code ch. 19, §114, (1885). Also available online at: http://hrlibrary.umn.edu/research/srilanka/statutes/Penal_Code.pdf.

⁹ Sri Lanka Penal Code ch. 19, §129, (1885). Also available online at: http://hrlibrary.umn.edu/research/srilanka/statutes/Penal_Code.pdf.

¹⁰ Sri Lanka Penal Code ch. 19, §191, (1885). Also available online at: http://hrlibrary.umn.edu/research/srilanka/statutes/Penal_Code.pdf.

¹¹ Sri Lanka Penal Code ch. 19, §296, (1885). Also available online at: http://hrlibrary.umn.edu/research/srilanka/statutes/Penal_Code.pdf.

in the commission of a suicide.¹² Under the Poisons, Opium and Dangerous Drugs Ordinance, manufacturing, trafficking, and possession of certain drugs is punishable by death.¹³

5. Sri Lanka prohibits the death penalty for people under eighteen years of age at the time of the offense,¹⁴ and for women who are pregnant at the time of conviction.¹⁵ Additionally, persons with intellectual and psycho-social disabilities may offer defenses to the alleged acts as factors mitigating against imposition of a death sentence.¹⁶
6. Sri Lankan courts operate subject to the Code of Criminal Procedure Act, last revised in 1980 (the Act).¹⁷ The Act provides that any offense punishable by death shall be tried by the High Court of Sri Lanka.¹⁸ The accused may, upon request to the court, be assigned defense counsel.¹⁹ The presiding judge announces the sentence, and signs a warrant for the commitment of the person sentenced to the custody of the superintendent of prison, and as soon as convenient thereafter, the presiding judge forwards to the President of Sri Lanka the notes of evidence from trial along with a report setting out the judge's opinion as to whether the death sentence should be carried out.²⁰
7. The President of Sri Lanka may either order a "respite of the execution of the warrant" or appoint a date, time, and place for the execution of the warrant to occur.²¹ Under the Act, the President may suspend the execution of sentence or remit the whole or any part of the punishment to which the person has been sentenced.²² Should an application be made to the President requesting a suspension or remission of sentence, the President may require that the presiding judge of the lower court state an opinion as to whether the application should be granted along with the reasons for such opinion.²³ Finally, the President may, without an application by the person sentenced, commute the death sentence to a punishment of rigorous

¹² Sri Lanka Penal Code ch. 19, §299, (1885). Also available online at: http://hrlibrary.umn.edu/research/srilanka/statutes/Penal_Code.pdf.

¹³ Sri Lanka Firearms Ordinance, art. 44(A) & Schedule C, amended by Act No. 22 of 1996; Cornell Center on the Death Penalty Worldwide, *Democratic Socialist Republic of Sri Lanka (Sri Lanka)*, (accessed Jan. 25, 2023), <https://deathpenaltyworldwide.org/database/#!/results/country?id=70>.

¹⁴ *Sri Lanka to amend laws on capital punishment for minors*, Economy Next, (accessed Jan. 25, 2023), <https://economynext.com/sri-lanka-to-amend-laws-on-capital-punishment-for-minors-88817/>; Sri Lanka Code of Criminal Procedure ch. 23, §281 (1979). Also available online at: <https://www.lawnet.gov.lk/code-of-criminal-procedure-2/>.

¹⁵ Sri Lanka Code of Criminal Procedure ch. 19, §54 (1885). Also available online at: http://hrlibrary.umn.edu/research/srilanka/statutes/Penal_Code.pdf.

¹⁶ Sri Lanka Code of Criminal Procedure art. 262 (1979), amended by Act No. 7 (2006). Also available online at: http://hrlibrary.umn.edu/research/srilanka/statutes/Code_of_Criminal_Procedure_Act.pdf.

¹⁷ Sri Lanka: Code of Criminal Procedure ch. 26 (1979). Also available online at: http://hrlibrary.umn.edu/research/srilanka/statutes/Code_of_Criminal_Procedure_Act.pdf.

¹⁸ Sri Lanka: Code of Criminal Procedure ch. 26 (1979). Also available online at: http://hrlibrary.umn.edu/research/srilanka/statutes/Code_of_Criminal_Procedure_Act.pdf.

¹⁹ Sri Lanka: Code of Criminal Procedure ch. 26, § 195(g) (1979). Also available online at: http://hrlibrary.umn.edu/research/srilanka/statutes/Code_of_Criminal_Procedure_Act.pdf.

²⁰ Sri Lanka: Code of Criminal Procedure ch. 26, § 286 (1979). Also available online at: http://hrlibrary.umn.edu/research/srilanka/statutes/Code_of_Criminal_Procedure_Act.pdf.

²¹ Sri Lanka: Code of Criminal Procedure ch. 26, § 286 (1979). Also available online at: http://hrlibrary.umn.edu/research/srilanka/statutes/Code_of_Criminal_Procedure_Act.pdf.

²² Sri Lanka: Code of Criminal Procedure ch. 26, § 311(1) (1979). Also available online at: http://hrlibrary.umn.edu/research/srilanka/statutes/Code_of_Criminal_Procedure_Act.pdf.

²³ Sri Lanka: Code of Criminal Procedure ch. 26, § 311(2) (1979). Also available online at: http://hrlibrary.umn.edu/research/srilanka/statutes/Code_of_Criminal_Procedure_Act.pdf.

or simple imprisonment for life or for any other term.²⁴ The Act also contains thorough appellate process for all proceedings, including specific provisions for appealing a decision of the High Court.²⁵

9. There is little information that suggests Sri Lanka has made any attempts to formally abolish the death penalty. In justifying the death penalty, Sri Lanka has repeatedly emphasized the role of state sovereignty in determining appropriate legal penalties.²⁶
10. As a response to overcrowding of prisons in light of the threat of COVID-19, in December 2020 the Sri Lankan Government announced several measures to reduce congestion in prisons. The government also announced its intention to commute the sentences of all persons on death row to a fixed term of twenty years, reinstating a routine procedure that existed prior to 1999. Further, it stated that persons who have already completed a twenty-year sentence would be released from prison.²⁷ It is unknown whether the sentences of all persons on death row were commuted at that time.
11. The Government of Sri Lanka has consistently voted in favor of the UN General Assembly resolution calling for a moratorium on the use of the death penalty, including most recently in 2022.²⁸
12. Despite not carrying out any executions since 1976, Sri Lanka continues to sentence individuals to death. In the past decade, courts have sentenced at least 1,599 people to death.²⁹ There remains secrecy surrounding death sentences, and there are credible reports that the government does not report all death sentences. Although Amnesty International gathered reports on eight new death sentences imposed in 2021, it is believed that the true number of death sentences issued is likely to be significantly higher.³⁰ The government reported that it had sentenced 33 people to death in 2021, including one woman.³¹ Based on the 2022 Prison Statistics of Sri Lanka, between 2017 and 2021 a total of 655 people were sentenced to death, 21 of whom were women.³²
13. In June 2019, former President Maithripala Sirisena announced his intention to reinstate the use of the death penalty in Sri Lanka for drug-related offenses and authorized the execution of

²⁴ Sri Lanka: Code of Criminal Procedure ch. 26, § 312 (1979). Also available online at: http://hrlibrary.umn.edu/research/srilanka/statutes/Code_of_Criminal_Procedure_Act.pdf.

²⁵ Sri Lanka: Code of Criminal Procedure ch. 26, § 331 (1979). Also available online at: http://hrlibrary.umn.edu/research/srilanka/statutes/Code_of_Criminal_Procedure_Act.pdf.

²⁶ UN General Assembly, Third Committee, Agenda item 68(b), (Nov. 3, 2022), U.N. Doc. A/C.3/77/L.44/Rev.; Third Committee, 49th plenary meeting (Nov. 11, 2022), 19:30, <https://media.un.org/en/asset/k15/k15m3987q6>.

²⁷ Zulfick Farzan, *All prisoners under death sentence will have their sentence reduced to 20 years*, News First, (Dec. 7, 2020), <https://www.newsfirst.lk/2020/12/07/all-prisoners-under-death-sentence-will-have-their-sentence-reduced-to-20-years/>.

²⁸ International Commission Against Death Penalty, *UNGA Moratorium Resolution Map*, <https://icomdp.org/unga/#>; World Coalition Against the Death Penalty, *9th Resolution for a moratorium on the death penalty: the trend is growing*, (Dec. 20, 2022), <https://worldcoalition.org/2022/12/20/9th-resolution-for-a-moratorium-on-the-death-penalty-the-trend-is-growing/>.

²⁹ Amani Nilar, *Sri Lanka's moratorium on executions on 45th year now*, News First, (Dec. 18, 2021), <https://www.newsfirst.lk/2021/12/18/sri-lankas-moratorium-on-executions-on-45th-year-now/>.

³⁰ Amnesty International, *Death Sentences and Executions 2021*, (Amnesty International: London, 2022), 36. Also available online at: <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

³¹ Statistics Division, Prison Headquarters, *2022 Prison Statistics of Sri Lanka*, (Colombo, Nov. 2022), 47. Also available online at: <http://prisons.gov.lk/web/wp-content/uploads/2022/12/prison-statistics-2022.pdf>.

³² Statistics Division, Prison Headquarters, *2022 Prison Statistics of Sri Lanka*, (Colombo, Nov. 2022), 47. Also available online at: <http://prisons.gov.lk/web/wp-content/uploads/2022/12/prison-statistics-2022.pdf>.

four prisoners convicted of drug trafficking.³³ This decision was opposed by the Sri Lankan Prime Minister and sparked pushback from various human rights organizations.³⁴

14. In preparation for resumption of executions, the president sought to appoint new executioners, as the previous executioner had resigned in 2014 without ever having carried out an execution.³⁵ The president appointed two executioners in June 2019.³⁶ In an apparent attempt to halt the planned executions, then-Prime Minister Ranil Wickremesinghe introduced legislation in August 2019 to end the death penalty, but the Parliament ultimately did not adopt this legislation.³⁷
15. While the new government elected in November 2019 has not attempted to resume executions, it has made no moves toward complete abolition of the death penalty either.³⁸ In 2020, Sri Lankan courts sentenced at least three people to death for drug-related offenses, out of at least 16 death sentences handed down that year.³⁹ In 2021, Sri Lankan courts sentenced at least one person to death for a drug-related offense, out of at least eight death sentences handed down in that year.⁴⁰
16. The Supreme Court in 2019 issued a stay order to halt the resumption of executions. It did so to consider petitions stating that the Government had arbitrarily selected the prisoners to be executed and the general secrecy surrounding the execution orders and preparations for the executions violated the rights of those facing the death penalty. The stay order was subsequently extended several times, the last time until July 2022.⁴¹ On August 31, 2022, President Wickremesinghe informed the Supreme Court through the Attorney General that he will not sign the implementation of the death penalty in these cases. It is unclear whether the stay order is still in place following this statement.⁴²

II. Judges and prosecutors handling cases in which women are charged with capital crimes do not have adequate gender-sensitive training (Concluding Observations paragraph 15(a)).

17. In 2017, the Committee recommended that Sri Lanka implement “systematic capacity-building to judges, prosecutors, lawyers, the police and other law enforcement officials on the Convention . . . to ensure that the judiciary is independent, impartial, professional and gender-

³³ R. M. Lilani, *Why is Sri Lanka reinstating death penalty*, Deutsche Welle, (Jul. 4, 2019), <https://www.dw.com/en/why-is-sri-lanka-reinstating-death-penalty/a-49469184>.

³⁴ R. M. Lilani, *Why is Sri Lanka reinstating death penalty*, Deutsche Welle, (Jul. 4, 2019), <https://www.dw.com/en/why-is-sri-lanka-reinstating-death-penalty/a-49469184>.

³⁵ Helen Regan, *Sri Lanka advertising for executioners after plan to reinstate death penalty*, (Feb. 12, 2019), <https://www.cnn.com/2019/02/12/asia/sri-lanka-executioner-ad-intl/index.html>.

³⁶ *Sri Lanka appoints executioners for return of death penalty*, The Guardian, (Jun. 28, 2019), <https://www.theguardian.com/world/2019/jun/28/sri-lanka-appoints-executioners-for-return-of-death-penalty-after-40-years>.

³⁷ *Bill to end death penalty comes as Sri Lanka plans hangings*, The Indian Express, (Aug. 2, 2019), <https://indianexpress.com/article/world/bill-to-end-death-penalty-comes-as-sri-lanka-plans-hangings-5872469/>.

³⁸ *Id.*

³⁹ Amnesty International, *Death Sentences and Executions 2021* (Amnesty International: London, 2022), 15. Available online at: <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

⁴⁰ Amnesty International, *Death Sentences and Executions 2021* (Amnesty International: London, 2022), 15. Available online at: <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

⁴¹ Amnesty International, *Death Sentences and Executions 2021*, (Amnesty International: London, 2022), 36. Also available online at: <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

⁴² *President informs the Supreme Court that he will not sign the death sentences*, Colombo Page, (Sept. 1, 2022), http://www.colombopage.com/archive_22B/Sep01_1662007289CH.php.

sensitive as a means of safeguarding women’s rights.”⁴³ The Ninth Periodic Report outlines training provided to police regarding the Convention and provides information about gender-sensitive prosecutions of sexual violence cases, but it does not mention gender sensitivity regarding women charged with capital crimes.⁴⁴

18. In a groundbreaking 2018 study, the Cornell Center on the Death Penalty Worldwide found that, in the global context, women are more vulnerable and most likely to be sentenced to death for criminal offenses committed within the context of gender-based violence⁴⁵ and manipulative or coercive relationships with male co-defendants.⁴⁶ Cornell’s data indicate that most women under sentence of death have been sentenced to death for the crime of murder.⁴⁷ These women have overwhelmingly experienced prolonged domestic violence at the hands of a partner, spouse, or another family member.⁴⁸ In many cases, the abuse has occurred repeatedly. Many women under sentence of death are survivors of gender-based violence and come from disadvantaged socio-economic backgrounds.⁴⁹ At a global level, sentencing courts typically fail to take into account a defendant’s experience as a survivor of gender-based violence or a victim of a manipulative or coercive relationship (for example in cases where women are pressured or tricked into transporting drugs) as mitigating factors during sentencing.⁵⁰ Research also indicates that courts also fail to account for power dynamics and tactics of coercive control that may affect a woman’s involvement in and culpability for a crime.
19. Cases documented by the Cornell Center have shown violations of women’s right to a fair trial. A 2021 follow-up study demonstrated that “fair trial principles dictate that courts should consider all relevant mitigating circumstances before imposing a sentence. In practice, however, many courts neglect gender-specific mitigation.”⁵¹
20. Moreover, the Cornell Center found that women are more likely to receive a death sentence when the adjudicating authority perceives that they are violating entrenched gender norms,

⁴³ Committee on the Elimination of Discrimination against Women, *Concluding observations on the eighth periodic report of Sri Lanka*, (Mar. 9, 2017), U.N. Doc. CEDAW/C/LKA/CO/8, ¶ 15(a).

⁴⁴ Committee on the Elimination of Discrimination against Women, *Ninth periodic report submitted by Sri Lanka under article 18 of the Convention, due in 2021*, (Aug. 10, 2022), U.N. Doc. CEDAW/C/LKA/9, ¶¶ 27-31.

⁴⁵ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, (Sept. 2018), 4. Available online at: <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁴⁶ Cornell Center on the Death Penalty Worldwide, *“No One Believed Me”: A Global Overview of Women Facing the Death Penalty for Drug Offenses*, (Sept. 2021), 6. Available online at: <https://deathpenaltyworldwide.org/publication/no-one-believed-me-a-global-overview-of-women-facing-the-death-penalty-for-drug-offenses/>.

⁴⁷ *Id.* at 11.

⁴⁸ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, (Sept. 2018), 4. Available online at: <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁴⁹ *Id.*

⁵⁰ Cornell Center on the Death Penalty Worldwide, *“No One Believed Me”: A Global Overview of Women Facing the Death Penalty for Drug Offenses*, (Sept. 2021), 6. Available online at <https://deathpenaltyworldwide.org/publication/no-one-believed-me-a-global-overview-of-women-facing-the-death-penalty-for-drug-offenses/>.

⁵¹ Cornell Center on the Death Penalty Worldwide, *“No One Believed Me”: A Global Overview of Women Facing the Death Penalty for Drug Offenses*, (Sept. 2021), 6. Available online at: <https://deathpenaltyworldwide.org/publication/no-one-believed-me-a-global-overview-of-women-facing-the-death-penalty-for-drug-offenses/>.

being cast as the “female fatale” or the “witch.” Women are often put on trial not only for acts they performed but also for allegedly being “a bad wife, a bad mother, and a bad woman.”⁵²

21. Global trends show that women sentenced to death face intersectional discrimination. According to Cornell’s 2018 report, most women on death row come from backgrounds of severe socio-economic deprivation and many are illiterate, which can reinforce unequal access to effective legal representation.⁵³ These women are more likely to be illiterate and unaware of their legal rights.⁵⁴ Illiteracy and lack of education among poor women leave them more vulnerable to discrimination, coercion, and exploitation.⁵⁵ This intersectional discrimination exacerbates the risk that a woman charged with a capital crime will be subjected to an unfair trial.
22. In Sri Lanka, Tamil women may be at particular risk of violations of fair trial rights. A shortage of court-appointed interpreters has led to difficulty in presenting witnesses and to defendants, particularly Tamil-speaking defendants, not having access to the free interpretation required under the law. Additionally, few legal textbooks are available in Tamil for Tamil defendants.⁵⁶

III. Sri Lanka retains discriminatory laws that place women at risk of being sentenced to death, particularly for drug-related offenses (Concluding Observations paragraph 13).

23. In 2017, the Committee recommended that Sri Lanka accelerate its law reform process “to review and repeal all discriminatory laws that violate fundamental rights.”⁵⁷ The Ninth Periodic Report makes no reference to laws authorizing the death penalty for drug-related offenses and aggravating factors that may disproportionately affect women.⁵⁸
24. When convicted of narcotic drug offenses, women are slightly more likely to receive a sentence of death than men.⁵⁹ Courts are also more likely to convict and incarcerate women for drug crimes than men. A study of 20 Sri Lankan jails and prisons found that 23 percent of male

⁵² Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, (Sept. 2018), 4. Available online at: <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁵³ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, (Sept. 2018), 3. Available online at: <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁵⁴ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, (Sept. 2018), 18. Available online at: <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁵⁵ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, (Sept. 2018), 18. Available online at: <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf> (last visited Dec. 29, 2022).

⁵⁶ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *2021 Country Reports on Human Rights Practices: Sri Lanka*, (2022), 17. Also available online at: https://www.state.gov/wp-content/uploads/2022/03/313615_SRI-LANKA-2021-HUMAN-RIGHTS-REPORT.pdf.

⁵⁷ Committee on the Elimination of Discrimination against Women, *Concluding observations on the eighth periodic report of Sri Lanka*, (Mar. 9, 2017), U.N. Doc. CEDAW/C/LKA/CO/8, ¶ 13.

⁵⁸ Committee on the Elimination of Discrimination against Women, *Ninth periodic report submitted by Sri Lanka under article 18 of the Convention, due in 2021*, (Aug. 10, 2022), U.N. Doc. CEDAW/C/LKA/9, ¶¶ 23-26.

⁵⁹ Statistics Division, Prison Headquarters, *2022 Prison Statistics of Sri Lanka*, (Colombo, Nov. 2022), 45. Also available online at: <http://prisons.gov.lk/web/wp-content/uploads/2022/12/prison-statistics-2022.pdf>.

respondents were incarcerated for drug-related offenses, while 56 percent of female respondents were incarcerated for the same.⁶⁰

25. Research suggests that by reinstating the death penalty for drug-related offenses, the law disproportionately discriminates against women. In Sri Lanka, committing a drug offense near a location where children attend educational, athletic, or social activities is an aggravating factor.⁶¹ In practice, these aggravating factors apply more frequently to female defendants than male defendants because women are often the primary caregivers to children. The law thereby indirectly discriminates against women.⁶² Between 2014 and 2020, thirty-seven women were sentenced to death, and eight of them were sentenced for drug-related offenses.⁶³
26. The Cornell Center found that economic insecurity, particularly the overrepresentation of women in “precarious work,” can create pathways to committing drug-related offenses.⁶⁴ Gender-based violence may influence a woman’s likelihood to engage in drug-related offenses, as well as her likelihood of facing criminal consequences. The Cornell Center explains that “[a]buse may increase a woman’s likelihood of offending in a number of ways. An abusive partner may coerce or manipulate a woman into engaging in drug-related activities. Financial control is an extremely common feature of abusive relationships and increases the chance women will commit a crime out of economic need. Past trauma often makes individuals more susceptible to suggestions, and trauma can also lead to mental health issues.”⁶⁵ Research “suggests that past trauma from abusive relationships affects the trajectories of many women who traffic drugs,” and that “women in prison for drug offenses are more likely than men to have endured adverse childhood experiences.”⁶⁶ According to the Cornell Center, “[o]ne hallmark of cases where a male partner influences or manipulates a woman into committing a drug offense is that she bears the brunt of the risk and the criminal consequences. This may occur in part because the male codefendant has access to more financial resources, or is more able to provide useful information about the drug trade to law enforcement if he faces criminal charges. . . . In addition, male scammers who organize drug couriers face a low risk of detection, while women who are their scam victims are often caught while crossing international borders.”⁶⁷

⁶⁰ Namini Wijedasa, *Hell is better than life in Lanka’s prisons*, Sunday Times, (Jan. 10, 2021), <https://www.sundaytimes.lk/210110/news/hell-is-better-than-life-in-lankas-prisons-427729.html>.

⁶¹ Parliament of the Democratic Socialist Republic of Sri Lanka, Conventions Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, No. 1 of 2008, (Jan. 23, 2008).

⁶² Cornell Law School, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses* (Oct. 5, 2021), <https://deathpenaltyworldwide.org/publication/no-one-believed-me-a-global-overview-of-women-facing-the-death-penalty-for-drug-offenses/?version=html>.

⁶³ Department of Prisons, Statistics Information, <https://perma.cc/FE2S-GTPP>, (last accessed on Jan. 25, 2023).

⁶⁴ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, (Sept. 2021), 20. Available online at: <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (last visited Sept. 26, 2022).

⁶⁵ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, (Sept. 2021), 25. Available online at: <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf> (footnotes omitted).

⁶⁶ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, (Sept. 2021), 6. Available online at: <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf>.

⁶⁷ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, (Sept. 2021), 26. Available online at: <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf>.

27. The Cornell Center has uncovered many cases (not specific to Sri Lanka) in which judges “relied on gender stereotypes to interpret women’s circumstances and motivations before sentencing them to death. They offer troubling indications that gender bias affects outcomes in capital drug cases. Notably, courts are reluctant to accept that a female defendant was tricked or pressured into transporting drugs unless she matches the profile of a helpless female victim.”⁶⁸
28. The Cornell Center describes “what some criminologists call a ‘double deviance’ effect” that may be in play when women are charged with drug-related offenses.⁶⁹ As part of this phenomenon, “courts may issue a harsher sentence if a female defendant’s offense not only contravenes the law but *also* deviates from behavioral norms socially deemed to be ‘gender-appropriate.’ . . . [B]y participating in an activity which public policy decries as harmful to a society’s well-being, particularly that of its youth, female drug offenders may face the additional stigma of contravening their gender-determined role as ‘mothers, the anchors of their families and caretakers.’”⁷⁰
29. The Cornell Center’s research shows that “[w]omen—including those charged with drug offenses—often struggle more than men to retain skilled counsel due to gender disparities in socioeconomic status and educational attainment.”⁷¹ These disparities also increase the risk of manipulation when women are charged alongside a male codefendant. The Cornell Center report highlights numerous cases in which male codefendants have pressured women to sign papers attesting to their culpability and the innocence of the men—in many cases when the women are not literate.

IV. Detention conditions for women violate international human rights standards.

30. According to the Cornell Center on the Death Penalty Worldwide, “[i]n Sri Lanka, female inmates receive paper-thin beds to sleep on, and the temperatures in the unventilated rooms reach dangerously high levels.”⁷² Prison conditions are poor due to old infrastructure, overcrowding and a shortage of sanitary facilities.⁷³ Prison conditions for persons on death row are particularly harsh, and a study showed that prisoners were locked in cells for 23 hours a day.⁷⁴ Women in detention are allowed to keep their children under five inside prison with

⁶⁸ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, (Sept. 2021), 7. Available online at: <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf>.

⁶⁹ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, (Sept. 2021), 29. Available online at: <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf>.

⁷⁰ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, (Sept. 2021), 29. Available online at: <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf>.

⁷¹ Cornell Center on the Death Penalty Worldwide, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses*, (Sept. 2021), 32. Available online at: <http://filesserver.idpc.net/library/No-One-Believed-Me.pdf>.

⁷² Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, (Sept. 2018), 21. Available online at: <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁷³ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *2021 Country Reports on Human Rights Practices: Sri Lanka*, (2022), 9. Also available online at: https://www.state.gov/wp-content/uploads/2022/03/313615_SRI-LANKA-2021-HUMAN-RIGHTS-REPORT.pdf.

⁷⁴ Human Rights Watch, *Sri Lanka: Death Sentence for Prison Official*, (accessed Jan. 25, 2023), <https://www.hrw.org/news/2022/01/17/sri-lanka-death-sentence-prison-official>.

them, but due to the state of prison conditions in the country, these children do not receive the facilities they require for healthy growth and development including suitable food or education.⁷⁵

V. Suggested questions for the Government of Sri Lanka

19. The authors of this report suggest the following questions for the Government of Sri Lanka:

- What steps has Sri Lanka taken to abolish the death penalty and replace it with a penalty that is fair, proportionate, and consistent with international human rights standards?
- What efforts are underway to ensure that, consistent with international human rights standards, no person is sentenced to death except for in a case in which the person intended to kill and did in fact kill?
- Please provide comprehensive data about the number of women charged with capital crimes, sentenced to death, or under sentence of death in Sri Lanka since 2017, disaggregated by age, race, caste, nationality, crime of conviction, date of conviction, relationship to the victim (if any), number and age of minor children (if any), status of any appeals or petitions for clemency, current sentence, and current location.
- What standards do courts apply regarding the immediacy and intensity of the threat in order for a defendant charged with murder to successfully plead self-defense? Are those standards subjective (belief of the defendant at that point in time) or objective (belief of a reasonable person in similar circumstances)?
- In what circumstances may women under sentence of death be kept in solitary confinement? To what extent do their detention conditions differ from the general conditions of detention for women in prison?
- What policies and procedures are in place to ensure that any person charged with a capital offense has access to qualified legal counsel with prior experience in such cases, and to ensure that their legal counsel has adequate resources to conduct investigations and hire experts to mount an effective defense?
- What training is available to capital defense counsel representing women regarding gender-specific defenses and mitigation in capital trials, encompassing trauma, gender-based violence, economic pressures, and family caretaking responsibilities?
- What training is available to judges and other judicial officers presiding over criminal proceedings, particularly in capital cases, to educate them about the importance of considering gender-specific defenses and gender-specific mitigation in capital trials, including trauma, gender-based violence, economic pressures, and family caretaking responsibilities? What training is available for judges and other judicial officers presiding over criminal proceedings, particularly in capital cases, regarding gender-based discrimination, domestic violence, gender-based violence, and tactics of coercive control that can lead to women committing death-eligible offenses?
- What measures are being taken to facilitate the presence of women in the judiciary?

⁷⁵ “Sri Lankan prisons.”

- What steps, if any, has the State Party taken to codify gender-specific defenses and mitigation in capital cases, encompassing women's experiences of trauma, poverty, and gender-based violence?
- What steps has the government taken to build support for formal abolition of the death penalty among lawmakers and the general public?
- What efforts have been undertaken to block any efforts to reintroduce the death penalty in Sri Lanka?
- How do courts ensure that no woman is sentenced to death for a crime she allegedly committed while under the age of 18? Who bears the burden of proving a defendant was age 18 or older at the time of the offense?
- Please describe any measures taken to eliminate intersecting forms of discrimination in the criminal legal system against women with disabilities, migrant and refugee women, women from disadvantaged socio-economic backgrounds, and women belonging to minority groups.
- Please describe the safeguards in place to ensure the safety, privacy, and health of women who are in detention, including access to adequate toilets and sanitation and feminine hygiene products. How has prison infrastructure design accommodated women's specific needs, including their need for privacy?
- What policies are in place to ensure that women under sentence of death have timely and adequate access to general and female-specific healthcare and counseling, including access to sanitary and menstrual products?
- What measures has the State Party implemented to ensure that all prison authorities adopt gender-sensitive policies in relation to women's detention, based on the Bangkok Rules and the Nelson Mandela Rules, ensuring women's safety and security pre-trial, during admission to any detention facility, and while incarcerated?
- What measures is the government taking to improve the nutritional value of food provided to women in prisons?
- What mechanisms are in place to ensure that women in custody are free from coercion, sexual harassment and gender-based violence, and how are perpetrators held accountable?
- What remedies are available to women who allege that they experience gender-based violence while in police custody, during the investigative stage of criminal proceedings, or after being sentenced?
- What efforts are taken to ensure that Tamil defendants have access to interpreters at all stages of legal proceedings and while communicating with their attorneys?
- What measures does the government take to protect migrant workers from Sri Lanka who are charged with capital crimes in other countries?