



**Sri Lanka's Compliance with The International Covenant on Civil and Political Rights:
The Death Penalty**

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996
and

The World Coalition Against the Death Penalty

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The Advocates for Human Rights (The Advocates) is a volunteer-based nongovernmental 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.

EXECUTIVE SUMMARY

1. While Sri Lanka continues to acknowledge itself as a *de facto* abolitionist state, it continues to sentence people to death while also recently expanding the death penalty to apply to drug-related offenses. Even in light of Sri Lanka's assertion that it does not intend to carry out any executions, its expansion of the death penalty to additional offenses not limited to the most serious crimes demonstrates a regression away from abolition. Further, research suggests that detention conditions continue to remain poor. Despite these setbacks, Sri Lanka has taken significant steps in attempting to address concerns relating to torture and ill-treatment of people in detention and the overcrowding in prisons by putting the necessary committees in place to implement positive changes.

Sri Lanka fails to uphold its obligations under the International Covenant on Civil and Political Rights

I. Sri Lanka's death penalty practices are not in compliance with Article 6 of the Covenant. (List of Issues Paragraph 15)

Sri Lanka has not abolished the death penalty.

2. In its 2020 List of Issues, the Committee requested Sri Lanka to “clarify whether there are any plans to resume the implementation of the death penalty for drug-related offenses, . . . , and thus to resume the long-standing moratorium on the death penalty.”¹ Sri Lanka asserts that it continues to maintain the moratorium “despite statements on its re-imposition being made from time to time,” and has “issued an interim order staying execution” while the Supreme Court considers its implementation.²
3. While Sri Lanka has observed a *de facto* moratorium on executions since 1976, courts continue to sentence people to death and the Constitution authorizes the use of the death penalty.³ In 2020, Sri Lankan courts sentenced ninety-three persons to death, after having sentenced 144 persons to death in 2019.⁴ As of September 2020, 1,284 people remain on death row.⁵
4. In 2019, the then-president of Sri Lanka announced his intention to commence executing persons sentenced to death for drug trafficking.⁶ While the new government elected in November 2019 has not attempted to resume executions, it has made no moves toward

¹ Human Rights Committee, *List of issues in relation to the sixth periodic report of Sri Lanka*, U.N. Doc. CCPR/C/LKA/Q/6, (Jul. 10, 2020), ¶ 15.

² Human Rights Committee, *Replies of Sri Lanka to the list of issues in relation to its sixth periodic report*, U.N. Doc. CCPR/C/LKA/Q/6, (May 11, 2022), ¶¶ 78, 79.

³ The Advocates for Human Rights, *Sri Lanka's Evolving Stance on the Death Penalty*, Dec. 29, 2017, available online at <https://www.theadvocatesforhumanrights.org/News/A/Index?id=98>; Reuters, *Sri Lanka reinstates death penalty for drug crimes ahead of polls* (June 25, 2019), available online at <https://www.reuters.com/article/us-sri-lanka-drugs/sri-lanka-reinstates-death-penalty-for-drug-crimes-ahead-of-polls-idUSKCN1TR0EA>.

⁴ Department of Prisons, *Prisons Statistics of Sri Lanka 2021*, pg. 47, available online at <http://prisons.gov.lk/web/wp-content/uploads/2021/05/prison-statistics-2021.pdf>.

⁵ State Ministry of Prison Reform and Prisoner's Rehabilitation, *Progress Report 2020*, pgs. 23-24, available online at <http://www.prisonmin.gov.lk/web/images/pdf/progress-report-2020.pdf>.

⁶ Ambika Satkunanathan, *Calls for Inputs - Secretary-General's Report on a moratorium on the use of the death penalty* (May 3, 2022).

complete abolition of the death penalty either.⁷ 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.⁸ 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.⁹

5. In 2021, the Supreme Court of Sri Lanka “extended until July 2022 the stay order that it had put in place to halt the resumption of executions authorized by then President Maithripala Sirisena in June 2019.”¹⁰
6. More recently, on January 12, 2022, Sri Lanka sentenced a former prison official to death in relation to the 2012 Welikada Prison incident.¹¹

Sri Lanka has not ratified the Second Optional Protocol to the Covenant.

7. The Committee further asked Sri Lanka to “provide information about the status of the bill to abolish the death penalty tabled by a member of parliament in August 2019 and about any other steps planned or taken towards the legal abolition of the death penalty and the ratification of the Second Optional Protocol to the Covenant.”¹² In its reply, Sri Lanka recognizes that the issue surrounding the death penalty is one of “public interest,” stating that there is a “diverse spectrum of views,” on the issue, thereby suggesting the possibility of reimplementing the death penalty.¹³
8. Sri Lanka has not ratified the Second Optional Protocol, despite its acceptance of a Universal Periodic Review recommendation to consider ratification.¹⁴ 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 2022.¹⁵

⁷ *Ibid.*

⁸ Amnesty International, *Death Sentences and Executions 2021* (2022), at 15, available online at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

⁹ Amnesty International, *Death Sentences and Executions 2021* (2022), at 15, available online at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

¹⁰ Amnesty International, *Death Sentences and Executions 2021* (2022), at 36, available online at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

¹¹ Human Rights Watch, *Sri Lanka: Death Sentence for Prison Official* (Jan. 17, 2022), available online at <https://www.hrw.org/news/2022/01/17/sri-lanka-death-sentence-prison-official>.

¹² Human Rights Committee, *List of issues in relation to the sixth periodic report of Sri Lanka*, U.N. Doc. CCPR/C/LKA/Q/6, (Jul. 10, 2020), ¶ 15.

¹³ Human Rights Committee, *Replies of Sri Lanka to the list of issues in relation to its sixth periodic report*, U.N. Doc. CCPR/C/LKA/Q/6, (May 11, 2022), ¶ 79.

¹⁴ 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, ¶ 2.1.

¹⁵ International Commission Against Death Penalty, *UNGA Moratorium Resolution Map*, <https://icomdp.org/unga/#;9th-Resolution-for-a-moratorium-on-the-death-penalty-the-trend-is-growing>, World Coalition Against the Death Penalty (Dec. 20, 2022), available online at <https://worldcoalition.org/2022/12/20/9th-resolution-for-a-moratorium-on-the-death-penalty-the-trend-is-growing/>.

Sri Lanka does not limit the death penalty to the most serious crimes.

9. The Committee asked Sri Lanka to “clarify whether any comprehensive review of relevant legislation is planned with a view to ensuring that the death penalty may be imposed only for the most serious crimes.”¹⁶
10. Currently, under Sri Lanka’s Penal Code, the death penalty is an available sentence for offences such as waging war against the state, including attempts and abetting such actions;¹⁷ mutiny of an officer in the military;¹⁸ 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;¹⁹ abetting in the commission of a suicide;²⁰ and murder.²¹ Under the Poisons, Opium and Dangerous Drugs Ordinance, manufacturing, trafficking, and possession of certain drugs is punishable by death.²²
11. Further, 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.²³ 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.²⁴ Between 2014 and 2020, thirty-seven women were sentenced to death, and eight of them were sentenced for drug-related offenses.²⁵

II. Sri Lanka’s torture and ill-treatment of persons deprived of their liberty, due process violations, and poor prison conditions threaten the right to life. (List of Issues Paragraphs 16–18)

12. While Sri Lankan law makes torture a punishable offense and mandates imprisonment for such offenses, human rights organizations report that torture and excessive use of force by police, specifically to extract confessions, remain endemic.²⁶ The Human Rights Commission of Sri Lanka (HRCSL) noted that many reports of torture referred to police officers allegedly “roughing up” suspects to extract a confession or otherwise elicit evidence to use against the accused.²⁷ Further, the Office of the High Commissioner for Human Rights noted it “has

¹⁶ Human Rights Committee, *List of issues in relation to the sixth periodic report of Sri Lanka*, U.N. Doc. CCPR/C/LKA/Q/6, (Jul. 10, 2020), ¶ 15.

¹⁷ Penal Code § 114.

¹⁸ Penal Code § 129.

¹⁹ Penal Code § 191.

²⁰ Penal Code § 299.

²¹ Penal Code § 296.

²² *See supra* note 8; Poisons, Opium, and Dangerous Drugs, 54A.

²³ 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.

²⁴ Cornell Law School, “*No One Believed Me*”: *A Global Overview of Women Facing the Death Penalty for Drug Offenses* (Oct. 5, 2021), available at <https://deathpenaltyworldwide.org/publication/no-one-believed-me-a-global-overview-of-women-facing-the-death-penalty-for-drug-offenses/?version=html>.

²⁵ Department of Prisons, Statistics Information, available online at <https://perma.cc/FE2S-GPTP>, last accessed on Jan. 25, 2023.

²⁶ U.S. Department of State, *2019 Country Reports on Human Rights: Sri Lanka*, available online at <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/sri-lanka/>.

²⁷ *Ibid.*

continued to receive credible information about cases of abduction, unlawful detention, torture and sexual violence by security forces, which allegedly took place between 2016 and 2018.”²⁸

13. Prison conditions for people on death row in Sri Lanka are particularly harsh; the 2020 Prison Study by the HRCSL describes the living conditions as “appalling and poor,” detailing testimony of those living on death row in conditions of severe overcrowding, poor sanitation, very limited access to health care and confinement to locked in cells for 23 hours a day.²⁹ These conditions contravene the United Nations’ Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).³⁰
14. The U.S. State Department reports that the prison conditions in Sri Lanka are poor due mostly due to overcrowding, but also to old infrastructure and a shortage of sanitary facilities.³¹ The commissioner of prisons indicates that the prison population significantly exceeds capacity, and that authorities will sometimes hold juveniles and adults together, and pretrial detainees and convicted prisoners together.³² In many prisons inmates reportedly sleep on concrete floors, and prisons often lack natural light or ventilation.³³
15. While Sri Lanka asserts that certain committees have been put in place to investigate and monitor the prison and detention center conditions, no formal information or reports have been released regarding any improvements to the poor detention conditions.³⁴
16. In Sri Lanka, living conditions for women on death row are poor. Female inmates receive paper-thin beds to sleep on, and the temperatures in the unventilated rooms reach dangerously high levels.³⁵

III. Suggested Recommendations for the Government of Sri Lanka

17. The coauthors suggest the following recommendations for the Government of Sri Lanka:
 - Impose a formal moratorium on the death penalty, effective immediately going forward, with a view toward complete abolition of the death penalty.
 - Abolish the death penalty and replace it with a sentence that is fair, proportionate, and respects international human rights standards.
 - Ratify the Second Optional Protocol to the ICCPR with a view toward abolishing the death penalty.

²⁸ *Ibid.*

²⁹ The Human Rights Commission of Sri Lanka, *Prison Study*, available online at <https://www.hrsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf>.

³⁰ Standard Minimum Rules for the Treatment of Prisoners, available online at https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf.

³¹ U.S. Department of State, 2019 *Country Reports on Human Rights: Sri Lanka*, available at <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/sri-lanka/>; Department of Prisons, Statistics Information, <https://perma.cc/FE2S-GPTP>, last accessed on Jan. 25, 2023.

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ U.N.G.A., 68th Session, *Pathways to, conditions and consequences of incarceration for women*, U.N. Doc. A/68/340, Aug. 21, 2013.

- In the meantime, commute all death sentences and replace them with terms of years and impose a formal, de jure moratorium on executions.
- In the meantime, direct all prosecutors and judges not to seek or impose the death penalty for any crime in which the defendant did not kill and intend to kill.
- Undertake a public education campaign about human rights, as well as about alternatives to the death penalty, in an effort to reduce public support for the death penalty.
- Amend the Penal Code to eliminate the death penalty as a possible punishment for any crime that does not result in death and in which the defendant did not intend to kill.
- Develop a plan of action to implement the HRCSL's recommendation to abolish the death penalty in Sri Lanka.
- Ensure that aggravating factors, particularly for drug-related offenses, do not disproportionately apply to female defendants, and develop and implement gender sensitization training for all judges hearing capital cases to ensure that they take into account appropriate factors in mitigation with regard to women, such as experience with gender-based violence, relationships involving coercive control or manipulation that may have prompted the woman to commit a crime, and self-defense in the context of long-term domestic violence.
- Institute judicial procedures and training to ensure that no person is sentenced to death on the basis of coerced confessions or other coerced testimony.
- Facilitate the work of a committee to research and publicize concrete findings and recommendations surrounding the death penalty, arbitrary arrests, and poor detention conditions.
- Facilitate training and capacity building in the prison service to ensure compliance with the Nelson Mandela Rules and the Bangkok Rules.
- On at least an annual basis, publicize data on people under sentence of death, disaggregated by sex, age, race / ethnicity, national origin, crime of conviction, date of conviction, sentencing authority, relationship (if any) to the victim, ages of any minor children, status of any appeals or petitions for clemency, and current location.