



SRI LANKA: 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, an alliance of more than 150 NGOs, bar associations, local authorities and unions, was created in Rome on 13 May 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. 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. Sri Lanka acknowledges itself as a de facto abolitionist state,¹ and the last execution in the country occurred in 1976.² During the Universal Period Review (UPR) in November of 2012, several countries urged Sri Lanka to consider abolishing the death penalty.³ Sri Lanka has taken significant steps in demonstrating progress toward abolition, though the country has not yet formally abolished death as a punishment. Moreover, Sri Lankan courts continue to sentence defendants to death; the moratorium is in effect only by virtue of the President's occasional initiatives to commute death sentences.

I. LEGAL FRAMEWORK

A. Legal basis for the death penalty in Sri Lanka

2. The Sri Lankan Constitution authorizes the death penalty “by order of a competent court, made in accordance with procedure established by law.”⁴ Similarly, any person charged with an offense is entitled to “a fair trial by a competent court”⁵
3. **Crimes that can result in the death penalty:** 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,⁶ mutiny of an officer in the military,⁷ 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,⁸ murder,⁹ and abetting in the commission of a suicide.¹⁰ Under the Poisons, Opium and Dangerous Drugs Ordinance, manufacturing, trafficking, and possession of certain drugs is punishable by death.¹¹ The death penalty is available only for defendants who are at least eighteen years old,¹² and no woman who is pregnant at the time of conviction may be sentenced to death.¹³ Additionally, persons with intellectual and psycho-social disabilities may offer defenses to the alleged acts as factors mitigating against imposition of a death sentence.¹⁴
4. **Procedures in capital cases:** Sri Lankan courts operate subject to the Code of Criminal Procedure Act, last revised in 1980 (the Act).¹⁵ The Act provides that any offense punishable by death shall be tried by the High Court of Sri Lanka.¹⁶ The accused may, upon request to the court, be assigned an attorney-at-law for his defense.¹⁷ 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.¹⁸
5. 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.¹⁹ 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.²⁰ 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.²¹ Finally, the President may, without consent of the person sentenced, commute the death sentence to a punishment of rigorous or simple imprisonment for life or for any other term.²² The Act also contains thorough

appellate process for all proceedings, including specific provisions for appealing a decision of the High Court.²³

B. 2012 Universal Periodic Review of Sri Lanka and responses to recommendations

6. In 2012, the United Nation's Human Rights Council conducted its second Universal Periodic Review (UPR) of Sri Lanka, and issued a report of the Working Group on the Universal Periodic Review.²⁴ The various UN Member States that participated in the UPR commended Sri Lanka on a variety of improvements on human rights conditions. Several countries recommended that Sri Lanka formally abolish the death penalty from its legal framework.²⁵ Turkey specifically recommended that Sri Lanka ratify the Second Optional Protocol to the ICCPR.²⁶
7. Sri Lanka did not support the above recommendations,²⁷ but offered the following clarification: "With regard to the abolition of capital punishment referred to in recommendations 128.19 to 128.23, it may be noted that Sri Lanka is a de facto abolitionist state. The Legal provisions governing the imposition of the death penalty are under review by a Committee appointed by the ministry of Justice."²⁸ Sri Lanka also indicated a willingness to give additional consideration to participating in other multilateral treaties, and specifically referenced recommendation 128.10, which refers to the Second Optional Protocol to the ICCPR.²⁹

II. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

8. There is very little information that suggests Sri Lanka made any attempts to implement UPR recommendations immediately following the UN Human Rights Council meetings in 2012. More recently, however, the country has taken several steps that demonstrate progress toward the abolition of the death penalty.

A. The Ministry of Justice Committee established a committee that has recommended commutation of some sentences.

9. In October 2013, the Ministry of Justice appointed a special 10-member committee, headed by retired Justice P. Edirisooriva, to review the Penal Code with a view to abolishing the death penalty.³⁰ There is little publicly available information about the work of this committee. Nonetheless, in early 2017, the committee recommended that the President commute the sentences of 60 people sentenced to death to life imprisonment, and the President did so on February 4, 2017, Sri Lanka's independence day.³¹

B. After thorough review, the Human Rights Commission of Sri Lanka recommended de jure abolition.

10. In 2014, the Human Rights Commission of Sri Lanka (HRCSL) published a Review on the Death Penalty (the Review).³² The Review provided a thoughtful and comprehensive historical and qualitative survey of the state of the death penalty in the country dating to the country's infancy and compared Sri Lanka's use of the death penalty to that of other nations around the world.³³ The Review recommended, inter alia, ratifying the Second Optional Protocol of the ICCPR and abolishing capital punishment accordingly, and taking all necessary steps to convert existing death sentences into life imprisonment. On January 1, 2016, the HRCSL submitted its Recommendation to Abolish the Death Penalty in Sri Lanka to President Maithripala Sirisena.³⁴ Since that time, however, the President apparently has

not taken any formal action toward implementing the recommendations, other than the February 2017 commutations.

C. The Sri Lankan Government continues to make public commitments to abolition.

11. In a speech given during general debate at the 30th Session of the UN Human Rights Council on September 14, 2015, the Minister of Foreign Affairs of Sri Lanka reinforced that the Sri Lankan Government was committed to maintaining the moratorium on the death penalty, with a view to its ultimate abolition.³⁵
12. On December 19, 2016, Sri Lanka voted with 116 Member States of the United Nations to support a universal moratorium on the death penalty.³⁶

D. Nonetheless, Sri Lankan courts continue to sentence people to death, rendering the moratorium subject to the discretion of the President to issue further commutations.

13. In September of 2016, a former Sri Lankan politician and four co-defendants were sentenced to death for killing a former presidential advisor and three others during local government elections in October of 2011.³⁷ Similarly, six police officers were sentenced to death after the High Court found them guilty of murdering a Sri Lankan youth in police custody in 2014, and another four suspects were sentenced to death after unlawfully assembling and killing a person in 2005.³⁸
14. Despite the continued implementation of the death penalty in sentencing, the President of Sri Lanka demonstrated the de facto abolition in practice. On February 2, 2017, President Sirisena commuted the death sentences of sixty condemned prisoners to life in prison on account of the 69th Independence Day of Sri Lanka.³⁹

III. Suggested Recommendations for the Government of Sri Lanka

15. The Advocates commends Sri Lanka for its de facto moratorium on the death penalty, and further commends the President of Sri Lanka for the recent mass commutation of death sentences. The Advocates respectfully recommends that Sri Lanka take the following measures, which are consistent with the recommendations by the Human Rights Commission of Sri Lanka from 2014-2016, as well as Sri Lanka's public statements at the United Nations:
 - 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.
 - 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.

- Ensure timely implementation of the HRCSL’s Recommendation to Abolish the Death Penalty in Sri Lanka.
- Facilitate the work of the death penalty committee chaired by former Justice Edirisooriva to ensure that it issues and publicizes concrete findings and recommendations.

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

² See e.g. Call to Resolve fate of 461 Sri Lanka death row inmates, BBC News, 25 April 2013, available at <http://www.bbc.com/news/world-asia-22290016>.

³ United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Sri Lanka*, A/HRC/22/16, paras. 128.19-128.23.

⁴ Constitution of Sri Lanka Chapter III, Article 13 (4), May 5, 2015 available at: <https://www.parliament.lk/files/pdf/constitution.pdf>.

⁵ Constitution of Sri Lanka Chapter III, Article 13 (3), May 5, 2015 available at: <https://www.parliament.lk/files/pdf/constitution.pdf>.

⁶ *Sri Lanka: Penal Code* [Sri Lanka], Chapter 19, §114, 1 January 1885, available at: http://hrlibrary.umn.edu/research/srilanka/statutes/Penal_Code.pdf.

⁷ *Sri Lanka: Penal Code* [Sri Lanka], Chapter 19, §129, 1 January 1885, available at: http://hrlibrary.umn.edu/research/srilanka/statutes/Penal_Code.pdf.

⁸ *Sri Lanka: Penal Code* [Sri Lanka], Chapter 19, §191, 1 January 1885, available at: http://hrlibrary.umn.edu/research/srilanka/statutes/Penal_Code.pdf.

⁹ *Sri Lanka: Penal Code* [Sri Lanka], Chapter 19, §296, 1 January 1885, available at: http://hrlibrary.umn.edu/research/srilanka/statutes/Penal_Code.pdf.

¹⁰ *Sri Lanka: Penal Code* [Sri Lanka], Chapter 19, §299, 1 January 1885, available at: http://hrlibrary.umn.edu/research/srilanka/statutes/Penal_Code.pdf.

¹¹ Sri Lanka Firearms Ordinance, art. 44(A) & Schedule C, amended by Act No. 22 of 1996; see also, <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Sri+Lanka#f11-3>.

¹² *Sri Lanka: Penal Code* [Sri Lanka], Chapter 19, §53, 1 January 1885, available at: http://hrlibrary.umn.edu/research/srilanka/statutes/Penal_Code.pdf.

¹³ Sri Lanka: Code of Criminal Procedure Act Chapter 19, §54, 1 January 1885, available at: http://hrlibrary.umn.edu/research/srilanka/statutes/Penal_Code.pdf.

¹⁴ Sri Lanka Code of Criminal Procedure of 1979, art. 262, amended by Act No. 7 of 2006. Available at: http://hrlibrary.umn.edu/research/srilanka/statutes/Code_of_Criminal_Procedure_Act.pdf.

¹⁵ Sri Lanka: Code of Criminal Procedure Act Chapter 26, 2 July 1979 available at: http://hrlibrary.umn.edu/research/srilanka/statutes/Code_of_Criminal_Procedure_Act.pdf.

¹⁶ See Sri Lanka: Code of Criminal Procedure Act Chapter 26, 2 July 1979, First Schedule, available at: http://hrlibrary.umn.edu/research/srilanka/statutes/Code_of_Criminal_Procedure_Act.pdf.

¹⁷ Sri Lanka: Code of Criminal Procedure Act Chapter 26, § 195(g), 2 July 1979 available at: http://hrlibrary.umn.edu/research/srilanka/statutes/Code_of_Criminal_Procedure_Act.pdf.

¹⁸ Sri Lanka: Code of Criminal Procedure Act Chapter 26, § 286, 2 July 1979 available at: http://hrlibrary.umn.edu/research/srilanka/statutes/Code_of_Criminal_Procedure_Act.pdf.

¹⁹ Sri Lanka: Code of Criminal Procedure Act Chapter 26, § 286, 2 July 1979 available at: http://hrlibrary.umn.edu/research/srilanka/statutes/Code_of_Criminal_Procedure_Act.pdf.

²⁰ Sri Lanka: Code of Criminal Procedure Act Chapter 26, § 311(1), 2 July 1979 available at: http://hrlibrary.umn.edu/research/srilanka/statutes/Code_of_Criminal_Procedure_Act.pdf.

²¹ Sri Lanka: Code of Criminal Procedure Act Chapter 26, § 311(2), 2 July 1979 available at: http://hrlibrary.umn.edu/research/srilanka/statutes/Code_of_Criminal_Procedure_Act.pdf.

²² Sri Lanka: Code of Criminal Procedure Act Chapter 26, § 312, 2 July 1979 available at: http://hrlibrary.umn.edu/research/srilanka/statutes/Code_of_Criminal_Procedure_Act.pdf.

²³ See generally, Sri Lanka: Code of Criminal Procedure Act Chapter 26, at § 331, 2 July 1979 available at: http://hrlibrary.umn.edu/research/srilanka/statutes/Code_of_Criminal_Procedure_Act.pdf.

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- ²⁴ United Nations Human Rights Council, Report of the Working Group on the Universal Periodic Review of Sri Lanka, A/HRC/22/16.
- ²⁵ United Nations Human Rights Council, Report of the Working Group on the Universal Periodic Review of Sri Lanka, A/HRC/22/16, paras. 128.19-128.23 (Argentina, Ecuador, Spain, Italy and New Zealand all specifically requested the abolishment of capital punishment).
- ²⁶ United Nations Human Rights Council, Report of the Working Group on the Universal Periodic Review of Sri Lanka, A/HRC/22/16, para. 128.10.
- ²⁷ United Nations Human Rights Council, Report of the Working Group on the Universal Periodic Review of Sri Lanka, A/HRC/22/16, para. 128.
- ²⁸ ²⁸ United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Sri Lanka Addendum*, A/HRC/22/16/Add.1, para. 2.2.
- ²⁹ ²⁹ United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Sri Lanka Addendum*, A/HRC/22/16/Add.1, para. 2.1.
- ³⁰ United Nations Human Rights Council, *Question of the death penalty Report of the Secretary-General*, A/HRC/27/23/.
- ³¹ Sri Lankan President commutes death sentences of 60 inmates to life, Death Penalty News, Feb. 3, 2017, <https://deathpenaltynews.blogspot.ch/2017/02/sri-lankan-president-commutes-death.html>.
- ³² Review on the Death Penalty by the Human Rights Commission of Sri Lanka. 2014. Available at: <http://www.hrsl.lk/PFF/Death%20Penalty%20English-2014.pdf>.
- ³³ Review on the Death Penalty by the Human Rights Commission of Sri Lanka. 2014. Available at: <http://www.hrsl.lk/PFF/Death%20Penalty%20English-2014.pdf>.
- ³⁴ *Recommendation to Abolish the Death Penalty in Sri Lanka*, Human Rights Commission of Sri Lanka, 1 January, 2016, available at: <http://hrsl.lk/english/wp-content/uploads/2016/01/RECOMMENDATION-TO-ABOLISH-THE-DEATH-PENALTY-IN-SRI-LANKA-E-1.pdf>.
- ³⁵ *Sri Lanka's Response to UNHRC: The Full Text of Foreign Affairs Minister's Speech Today*, Colombo Telegraph, September 14, 2015 available at: <https://www.colombotelegraph.com/index.php/sri-lankas-response-to-unhrc-the-full-text-of-foreign-affairs-ministers-speech-today/>.
- ³⁶ The UN General Assembly voted overwhelmingly for a 6th resolution calling for a universal moratorium on executions. World Coalition Against the Death Penalty. December 20, 2016. Available at: <http://www.worldcoalition.org/The-UN-General-Assembly-voted-overwhelmingly-for-a-6th-resolution-calling-for-a-universal-moratorium-on-executions.html>.
- ³⁷ Duminda Silva: Sri Lankan ex-MP sentenced to death. BBC News. September 8, 2016. Available at: <http://www.bbc.com/news/world-asia-37310795>.
- ³⁸ Sri Lanka courts sentences six police officers to death for killing youth in custody. Colombo Page. January 9, 2017. Available at: http://www.colombopage.com/archive_17A/Jan09_1483977749CH.php.
- ³⁹ 60 Condemned prisoners get deaths sentence commuted to life imprisonment. Daily Mirror. February 2, 2017. Available at: <http://www.dailymirror.lk/article/-condemned-prisoners-get-deaths-sentence-commuted-to-life-imprisonment-123171.html>.