

**Special Rapporteur on extrajudicial, summary or arbitrary  
executions - Call for input on the imposition of the death  
penalty and its impact**

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## 1. Introduction – status of the death penalty in Sri Lanka

The death penalty continues to be a penalty for several offences including murder and drug trafficking in Sri Lanka. Sections 286 (b) and (c) of the Code of Criminal Procedure Act No. 15 of 1979 state that the President of Sri Lanka is required to authorize capital punishment for an execution to take place and that executions must be carried out by hanging.

There has been a moratorium on executions in Sri Lanka since 1976, when the last execution took place. Since then, apart from a few events which caused public uproar and led to calls for the resumption of executions, no government has commenced executing persons on death row.

As the death penalty has not been abolished, persons continue to be sentenced to death every year. In the year 2020, ninety-three persons were sentenced to death while 144 persons were sentenced to death in the year 2019.<sup>1</sup> Persons on death row remain in prison until they die, or their sentences are commuted to life imprisonment and then a fixed term of twenty years. Due to the number of individuals being sentenced to death each year, without a proportional release of persons on death row, the detention conditions on death row deteriorate each year due to the limited infrastructure of prisons. As of September 2020, 1,284 persons remain on death row in Sri Lanka.<sup>2</sup>

In 2019, the former President of Sri Lanka Mr. Maithripala Sirisena, influenced by the war on drugs policy of the President of Philippines, announced his intention to commence executing persons sentenced to death for drug trafficking. Despite national and international outcries, the government continued with preparations to resume executions. The gallows situated at the Welikada Prison in Colombo were restored<sup>3</sup> and two hangmen were recruited following an advertisement for executioners being published by the government<sup>4</sup>. The Supreme Court in response to fundamental rights petitions lodged by persons on death row against the decision of the president, issued an interim injunction preventing the commencement of executions until the court delivered its determination.<sup>5</sup> While the new government elected in November 2019 has not attempted to resume executions, it has made no moves towards complete abolition of the death penalty either.

Sri Lanka has not ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). However, the government of Sri Lanka has consistently voted

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<sup>1</sup> Department of Prisons, Prisons Statistics 2020. 2021. <http://prisons.gov.lk/web/wp-content/uploads/2021/05/prison-statistics-2021.pdf>

<sup>2</sup> State Ministry of Prison Reform and Prisoner's Rehabilitation, Progress Report 2020, 2021. <http://www.prisonmin.gov.lk/web/images/pdf/progress-report-2020.pdf>

<sup>3</sup> News First, "Executioner's post gets 45 applications", 28 February 2019. <https://www.newsfirst.lk/2019/02/28/executioners-post-gets-45-applications/>

<sup>4</sup> BBC News, "Sri Lanka hires first two hangmen in 43 years", 29 June 2019. <https://www.bbc.com/news/world-asia-48812576#:~:text=Sri%20Lanka%20has%20recruited%20two,been%20in%20place%20since%201976.>

<sup>5</sup> Al Jazeera, "Sri Lanka court suspends executions until October 30", 5 July 2019. <https://www.aljazeera.com/news/2019/7/5/sri-lanka-court-suspends-executions-until-october-30>

in favour of the UN General Resolution calling for a moratorium on the use of the death penalty, including most recently in 2020.<sup>6</sup>

## **2. Treatment of individuals sentenced to death**

### *Treatment and conditions on death row*

The national study of prisons of the Human Rights Commission of Sri Lanka (HRCSL) found that persons on death row are one of the most vulnerable groups in prison where they suffer inhuman conditions of detention for decades, while serving a sentence without an end date. The majority of persons sentenced to death are from marginalized backgrounds, could not afford competent legal representation and had not even been arrested for an offence.<sup>7</sup>

The study found that persons on death row are referred to as ‘condemned prisoners’ within the system. They are locked in their wards/cells for up to 23 hours per day, without engaging in any meaningful activity or access to most rehabilitation programs that other persons in prison are able to access.

Those who are held in cells are not able to access the toilet at night as there are no toilets within locked cells. Hence the multiple occupants of a cell are required to use a plastic bag/bucket to relieve themselves at night time. This bucket/bag remains in the cell for the duration of the night and is cleaned by one of the occupants in the morning. While this remains the norm in prisons in Sri Lanka for persons held in cells, persons on death row have to suffer this ordeal for decades due to their indeterminate sentences.

According to the HRCSL study, 78% of male and 33% of female persons on death row stated that feelings of anxiety, depression and sadness interfere with their daily functioning. Additionally, 12% of male and 6% of female respondents stated they have self-harmed, while a statistically significant number of males on death row stated that they have thought about committing suicide. 9% of males and 10% of females on death row stated that they have attempted to commit suicide while in prison. The fact that they were facing an indefinite sentence without an end date was a cause of mental distress for most persons on death row, and some persons stated to the HRCSL that they would rather be executed than suffer in this manner for a prolonged period of time.

The HRCSL report also mentions that in 2018-19 when former president Sirisena announced his intention to resume executions of persons on death row after a moratorium of over forty years, the prison officers confirmed that persons on death row became extremely distressed and were in a state of panic and anxiety due to the uncertainty that ensued after the decision was announced, leading many of them to fall sick.

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<sup>6</sup> *International Commission Against Death Penalty*, UNGA Moratorium Resolution Map, <https://icomdp.org/unga/#>

<sup>7</sup> *Human Rights Commission of Sri Lanka*, National Study of Prisons, December 2020 – chapter: Prisoners on Death Row.

### *Access to family members and legal representatives*

Persons on death row have limited contact with their family members as visiting prison can be a costly process for families travelling from rural areas. They also stated that due to the prolonged period of time they were held in prison for and the stigma and discrimination faced by family members of persons on death row in society, many families had become estranged as a result of the death penalty.<sup>8</sup>

With regards to legal representation, a number of persons on death row reported that during their trial, they were unable to retain a private lawyer to the high costs of legal service for death sentence cases particularly because such cases are known to continue for a prolonged period of time. In many cases therefore, persons on death row were represented by state-appointed counsel for the duration of their trial in the High Court. The general perception reported regarding state-appointed counsel was that they were junior lawyers with little experience who also took very little interest in the case as they were being poorly remunerated by the state, and therefore did not cross-examine witnesses properly or mount a vigorous defence.

Persons on death row informed the HRCSL in writing that they did not have lawyers for a part or whole of their trial because the state appointed lawyer failed to be present or withdrew their services completely before the trial was concluded. Some who were appointed state counsel reported that their lawyers were not even present in court on the day the death sentence was pronounced. Therefore, it was felt by a number of persons that if they were able to afford a higher quality of legal service, they would not have been sentenced to death.<sup>9</sup>

Furthermore, although the court can assign a state counsel to the defendant for the trial at the High Court and if the defendant wishes to appeal the decision in the Court of Appeal, an assigned counsel for appeal at the Supreme Court is not guaranteed by law and is at the discretion of the court.<sup>10</sup> Therefore, persons on death row reported to the HRCSL that they did not appeal their sentences to the Supreme Court because they could not afford to retain a lawyer, which is significantly curtails the right of all persons to appeal/judicial review of a sentence.

### **3. Impact of the death penalty on family members**

Persons on death row, particularly in the case of male respondents, widely reported to the HRCSL that the sentence led to their family suffering livelihood hardships because they were the primary bread winners. The financial plight of their family members due to the lack of a

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<sup>8</sup> Ibid.

<sup>9</sup> *Human Rights Commission of Sri Lanka, National Study of Prisons, December 2020 – chapter: Access to Legal Representation.*

<sup>10</sup> Code of Criminal Procedure Act No. 15 of 1979, s 353

breadwinner was the most cited cause of distress for persons on death row. Further, many persons on death row reported that as a result of their sentence, their partners had separated from them and as a result their children were without primary caregivers, under the care of elderly parents/relatives or in children's homes.

It was also documented by the HRCSL that children of persons on death row face stigma and discrimination when trying to attain employment, particularly if they wished to join a state institution. Furthermore, where certain job roles required police clearance report, the report would mention the conviction status of their parent, which could result them in being denied the job opportunity.<sup>11</sup>

#### **4. Relationship between prison officers and persons on death row**

Prison officers reported to the HRCSL that they were extra careful when dealing with persons on death row.<sup>12</sup>

The prison staff reported to the HRCSL, that since the persons on death row are serving an indefinite sentence, they have a "nothing to lose" attitude that prison officers were fearful of. The most severe punishment for committing a misdemeanour in prison, as per the Prisons Ordinance, is an extension of the sentence period. However, this does not affect persons on death row who are already serving an indefinite sentence. The prison officers stated they would therefore always take extra care to avoid upsetting the population of persons on death row.

The prison report highlights that compared to other groups of respondents, persons on death row stated that officers treated them with respect and dignity. Even prison staff reported that officers empathise with the conditions of persons on death row and would often try to assist them or accommodate requests where possible.<sup>13</sup>

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<sup>11</sup> *Human Rights Commission of Sri Lanka*, National Study of Prisons, December 2020 – chapter: Prisoners on Death Row.

<sup>12</sup> *Human Rights Commission of Sri Lanka*, National Study of Prisons, December 2020 – chapter: Challenges faced by the Prison Administration

<sup>13</sup> *Human Rights Commission of Sri Lanka*, National Study of Prisons, December 2020 – chapter: Prisoners on Death Row.