**Office of the High Commissioner for Human Rights: report on human rights challenges in addressing and countering all aspects of the world drug problem**

**Submitted by**

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**Human rights challenges in addressing and countering all aspects of the world drug problem**

1. **Background**

The “war on drugs” rhetoric has been employed by successive Sri Lankan governments to militarise drug control and treatment. The punitive, militarized approach of the government, rather than a health and human rights based approached has resulted in making persons who use drugs [vulnerable](https://www.hri.global/files/2021/08/03/HRI_Report_-_Sri_Lanka_Drug_Control.pdf) to arrest, detention and torture by the police and security forces. Former president Maithripala Sirisena sought to follow the approach of Philippines President Duterte to combat drug trafficking, even announcing plans to resume executions, despite a moratorium on the death penalty in place since 1976. President Gotabaya Rajapakse, who came to power in November 2019, was elected on the platform of strengthening national security and protecting society from the “drug menace”. In this context, persons who use drugs are [demonised](https://www.hri.global/files/2021/08/03/HRI_Report_-_Sri_Lanka_Drug_Control.pdf) by state rhetoric and the media, and considered to be “undesirables” by society, thereby making them expendable.

The report of the first national [study of prisons](https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf) conducted by the Human Rights Commission of Sri Lanka (hereinafter referred to as the prison study), which was published in December 2020 found that persons who use drugs are likely to be subject to violence by the police during arrest and detention, as well as during their time in prison.

According to the [prison statistics](http://prisons.gov.lk/web/wp-content/uploads/2022/12/prison-statistics-2022.pdf) issued by the Department of Prisons, 64.2% of people who were convicted in 2021 were imprisoned for drug-related offences. The majority of persons convicted for drug-related offences are charged with minor drug offences and can be discharged upon the payment of a fine. But they are imprisoned for up to six months if they cannot afford to pay the fine. In 2021, 60.5 % of the prison population was serving sentences due to the non-payment of fines. Although a breakdown of what percentage of this group was imprisoned due to the non-payment of fines for drug offences is not available, interviews with incarcerated persons and the general profile of those imprisoned for drug use and possession of small quantities of narcotics, i.e. poor, disadvantaged, indicates that a considerable portion of the 60.5% are likely in prison for the non-payment of fines for drug offences. Furthermore, as drug offences are non-bailable except in exceptional circumstances, persons arrested on drug charges are held in prolonged pre-trial detention in [remand prison](https://www.hri.global/files/2021/08/03/HRI_Report_-_Sri_Lanka_Drug_Control.pdf) until the conclusion of their case.

Deaths of persons who used drugs occurring in prison were seen to a follow a pattern. The [prison study](https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf) documented deaths of persons who had been remanded for drug-related offences. These individuals suffered withdrawal symptoms during their first night in prison, and prison officers who are not trained in dealing with such persons, had responded by using of force to restrain the person, resulting in their death.

1. **Nexus between the ‘War on Terror’ and the ‘War on Drugs’**

The threat of the “drug menace” and the portrayal of the drug problem as a national security issue has long been used by successive governments to increase the involvement of the military in drug control and prevention. Particularly after 2019, President Rajapakse’s government heavily promoted the [narrative](https://groundviews.org/2021/10/10/creating-national-insecurity-prevention-of-terrorism-act-and-the-death-penalty/) that the military which “successfully saved the country from the threat of terrorism will also save the country from the threat of drugs”. By enacting the Bureau of Rehabilitation Act in January 2023, the government has further entrenched the powers and involvement of [the military in drug prevention and treatment](https://groundviews.org/2023/04/02/tip-of-the-iceberg-how-oppressive-laws-interconnect/).

The government uses narratives that conflate the drug threat with terrorism to pass legislation that violates human rights and expands the powers of the security forces and police. Persons who use drugs, and persons from marginalized socio-economic groups who sell small quantities of drugs to buy drugs as they are dependent on drugs, or are drawn into selling drugs due to economic precarity, are targeted under punitive legal frameworks and imprisoned in overcrowded prisons. At the same time, persons engaging in large scale drug trafficking, are rarely prosecuted, presumably because they enjoy political patronage and protection.

Since 2020, there has been a significant increase in the number of persons allegedly involved in drug trafficking or organised [crime being killed by the police in supposed encounters.](https://www.ft.lk/columns/Connecting-the-dots-The-death-of-a-drug-trafficker-and-the-state-of-democracy/4-709134#.X8oSG0OIGrw.twitter) The reports of such deaths usually follow one of two patterns - either a person is killed during a police raid because the deceased is allegedly engaged in a shootout with the police when resisting arrest, or the arrested person in police custody is taken to a certain location “in order to retrieve evidence” when they were allegedly shot while trying to escape. At least [ten deaths](https://docs.google.com/spreadsheets/d/1tY-fpw6bOaCtylhEkU7nq7ZC8UyYGRGG/edit#gid=187108554) have been reported in the former category and five in the latter.

1. **Compulsory drug treatment**

Persons who are found in possession of drugs or deemed dependent on drugs can be [forced](https://www.hri.global/files/2021/08/03/HRI_Report_-_Sri_Lanka_Drug_Control.pdf) to undergo drug treatment undertaken by the National Dangerous Drug Control Board (NDDCB), the principal drug control authority that is within the purview of the Ministry of Defence. Many persons are sent for compulsory drug treatment at the Kandakadu Rehabilitation Centre.

The Kandakadu Rehabilitation Centre was formerly used by the military to ‘rehabilitate’ alleged former LTTE cadres, after the end of the armed conflict in Sri Lanka in 2009. The methods used to select persons to be sent to these centres as well as the manner in which they were treated at the centres were found to have [contravened international humanitarian and human rights standards](https://www.refworld.org/pdfid/4ca0ae592.pdf). In 2013, the centre was converted to a centre to treat persons who use drugs with the military continuing to manage the centre. Although the government has denied that the military continues to be involved in the daily operations of the centre, a [study](https://www.hri.global/files/2021/08/03/HRI_Report_-_Sri_Lanka_Drug_Control.pdf) conducted on drug rehabilitation in Sri Lanka found that Kandakadu is managed by the military who are responsible for its day to day functions. Persons who had been detained at the centre attested to the severe violence used by military officers to maintain discipline and mete out punishment. Examples of the use of violence include being beaten, handcuffed for several hours, hung up by their wrists for several hours, tied to a three, forced to roll over until one throws up, etc.

In July 2022, a [mass escape](http://www.colombopage.com/archive_22A/Jun29_1656488138CH.php) from the Kandakadu Rehabilitation Centre was reported; according to news reports, a man died at the centre due to being assaulted by military officers, which led to unrest among detainees and over 600 persons escaped in the commotion that ensued. [Video footage](https://www.facebook.com/watch/?v=1037625077141804&extid=CL-UNK-UNK-UNK-AN_GK0T-GK1C-GK2C&ref=sharing) from within the centre shows persons speaking about the level of violence at the centre and begging to be sent to prison, instead of back to Kandakadu. The majority of persons who escaped were re-arrested. Four officers of the security forces were [arrested](https://www.newsfirst.lk/2022/07/06/kandakadu-break-inmates-cause-of-death-revealed-by-post-mortem/) in connection with the death and two blunt sticks allegedly used to assault the deceased were seized.

Rehabilitation is also conducted at private, fee-levying centres in Sri Lanka, where treatment is often dispensed on the basis of religious teachings. The use of violence at such centres as part of treatment and punishment has been [reported](https://www.hri.global/files/2021/08/03/HRI_Report_-_Sri_Lanka_Drug_Control.pdf). The NDDCB is responsible licensing such centres and conducting routine inspections to monitor the standards of care. However, it was found that the NDDCB maintains poor oversight of private treatment centres.

Drug treatment in Sri Lanka primarily follows an abstinence-based approach. The complete [lack](https://hri.global/wp-content/uploads/2022/11/HRI_GSHR-2022_Full-Report_Final-1.pdf) of harm reduction methods and science-backed treatment founded upon a public health approach can result in torture and inhuman treatment as well prevent persons with drug dependence from enjoying the highest attainable standard of healthcare.

1. **Women imprisoned drug related offences**

According to the [statistics](http://prisons.gov.lk/web/wp-content/uploads/2022/12/prison-statistics-2022.pdf) from the Department of Prisons, of the 215 women convicted during the year 2021, 83 were convicted for drug related offences.

The HRCSL [prison study](https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf) noted discernible socio-economic patterns that led to women becoming involved in the drug trade. In the case of women who had lower literacy levels and were from impoverished backgrounds, the absence of a male livelihood earner drew them to selling drugs. Due to the lack of employable skills or qualifications and limited access to employment opportunities they were drawn into selling narcotics as a relatively accessible means of earning money. Several women reported that they took control of the business after their husbands were imprisoned on drug trafficking charges. Although the offence of drug trafficking carries the death penalty in Sri Lanka, “due to the severity of the socio-economic difficulties they face, women appeared to be unaware of or unconcerned about the penalty”, demonstrating the limited efficiency of the death penalty as a deterrent.

The [report](https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf) also states that a number of women reported being falsely implicated in drug cases by the police, simply due to their proximity to a male family member who was involved in the drug trade, while the women themselves had never engaged in drug related activities. They stated that the law enforcement authorities were not inclined to believe their claims, as they were judged by the actions of their family members. Women who were previously charged with drug offences stated they were arrested again, despite the absence of reasonable suspicion or evidence of their continued involvement only because law enforcement authorities seemingly hold the assumption that such women cannot be presumed innocent owing to their past record. Women who were arrested for drug related charges also stated they were subjected to violence in police custody during interrogation and were forced to undergo invasive and painful body cavity searches by female police officers.

Incarceration, particularly for drug offences, results in women losing access to their children, being subject to social stigma and upon release facing innumerable challenges reintegrating.

1. **The Bureau of Rehabilitation Act**

In September 2022, the Rehabilitation Bureau [Bill](https://groundviews.org/2022/09/30/arbitrary-detention-and-torture-by-another-name-the-proposed-bureau-of-rehabilitation/) was presented in the Parliament of Sri Lanka. The draft Bill purported to establish a bureau that would be tasked with the “rehabilitation of drug dependent persons, ex-combatants, members of violent extremist groups and any other group of persons who require treatments and rehabilitation”. The Bill empowered the Bureau to detain persons for the purpose of rehabilitation without a judicial order or supervision. The Governing Council of the Bureau included military and law enforcement personnel, and the Bureau was empowered to designate members of the security forces to discharge functions under the Act.

The Bill was challenged in the Supreme Court for being inconsistent with Constitutionally guaranteed fundamental rights after it was met with a public outcry. In its [determination](https://groundviews.org/2022/10/26/only-a-temporary-reprieve-the-supreme-court-determination-on-the-bureau-of-rehabilitation-bill/), the court stated that the Bill’s inconsistency with the constitution shall cease if references to ex-combatants, violent extreme groups and “any other group of persons” are deleted, and Bill is limited to “drug dependent persons” and “such other persons as may be identified by law”. The Bill, which was passed in Parliament in January 2023 [retains all problematic provisions](https://groundviews.org/2023/04/02/tip-of-the-iceberg-how-oppressive-laws-interconnect/) related to compulsory drug treatment as well as some related to the involvement of the military.

1. **The death penalty for drug offences**

There has been a moratorium on executions in Sri Lanka since 1976, when the last execution took place. The death penalty has not been abolished and persons continue to be sentenced to death for offences which carry the death sentence, such as drug trafficking. Due to the increasing 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 and basic facilities and services.

In 2018, the former President Sirisena announced he would resume executions of persons on death row for drug trafficking. Although this announcement was met with an outcry both nationally and internationally, the President reportedly approved a list of persons to be executed. According to the report of the [prison study](https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf), during this time, the gallows at Welikada Prison were undergoing renovation following the order of the President, and upon hearing the announcement that executions would be resumed, persons on death row had fallen sick en masse.

The Supreme Court issued an interim injunction preventing the commencement of executions due to fundamental rights petitions lodged by persons on death row as well as civil society in July 2019. In [February 2023](https://www.dailynews.lk/2023/02/24/local/298107/president-will-not-sign-death-sentence-execution-ag-tells-sc) the Attorney- General gave an undertaking in the Supreme Court on behalf of the President that executions would not be resumed and the moratorium would remain.

However, since the death penalty has not been abolished, the risk that a successive president may reverse the moratorium and revive executions persists. For instance, the leader of the opposition Mr. Sajith Premadasa, the candidate who ran against Mr. Gotabaya Rajapakse in the November 2019 presidential elections, has on several [occasions](https://economynext.com/sri-lanka-opp-leader-wants-death-penalty-for-terrorists-drug-traffickers-84353/) stated that the death penalty should be imposed as a punishment for drug and terrorism related offences.