



# **SRI LANKA: HALT PREPARATIONS TO RESUME EXECUTIONS**

**AMNESTY  
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Sri Lanka has not executed anyone since 1976. The Sri Lankan prison authorities, on the instructions of President Maithripala Sirisena, have taken decisive steps to resume executions in the next few months. An advertisement has been published to recruit an executioner,<sup>1</sup> the names of death row prisoners convicted of drug trafficking have been identified for execution,<sup>2</sup> and a rope for the hanging has been procured.<sup>3</sup>

President Sirisena has specifically stated in June 2018 that those who are convicted of drug trafficking already under sentence of death, and who are engaging in drug dealing while in prison, would be executed.<sup>4</sup> In February 2019, the Minister of Justice confirmed that 13 persons are in line to be executed.<sup>5</sup> The given justification was to deter the crime of drug trafficking. However, there is absolutely no justification to implement the death penalty, including in a country where it has not been implemented for 42 years. Amnesty International opposes the death penalty in all cases and under any circumstances, everywhere, including Sri Lanka. Here's why.

## RESUMPTION OF EXECUTIONS: AGAINST SRI LANKA'S OWN ACHIEVEMENTS ON DEATH PENALTY AND THE STATED GOAL OF ABOLITION UNDER INTERNATIONAL LAW

The resumption of executions in Sri Lanka, after more than four decades without any executions, would constitute a significant setback for the country's human rights record and would be contrary to the stated goal of abolition of the death penalty set out in Article 6(6) of the International Covenant on Civil and Political Rights (ICCPR). Sri Lanka has been a state party to this treaty since 1980. As most recently noted by the UN Human Rights Committee – the body tasked with the implementation of the treaty – in its General Comment 36, “It is contrary to the object and purpose of article 6 for States parties to take steps to increase de facto the rate and extent in which they resort to the death penalty”.<sup>6</sup>

Over the decades, the UN system has worked to limit the use of the death penalty and has repeatedly urged UN member states to remove it from national legislation. Among other instruments, since 2007 the UN General Assembly has adopted – with an increased cross-regional support – seven resolutions calling for the establishment of a “moratorium on executions *with a view to abolishing the*

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<sup>1</sup> “Sri Lanka begins recruitment drive for ‘moral’ hangmen”, BBC News, 13 February 2019, [www.bbc.co.uk/news/world-asia-47230147](http://www.bbc.co.uk/news/world-asia-47230147)

<sup>2</sup> “List of inmates with death penalty sent to President”, News First, 17 December 2018, [www.newsfirst.lk/2018/12/17/list-of-inmates-with-death-penalty-sent-to-the-president/](http://www.newsfirst.lk/2018/12/17/list-of-inmates-with-death-penalty-sent-to-the-president/); “Death sentence: List of 18 submitted to Justice Ministry”, Daily Mirror, 15 July 2018, [www.dailymirror.lk/article/death-sentence-list-of-submitted-to-justice-ministry-152726.html](http://www.dailymirror.lk/article/death-sentence-list-of-submitted-to-justice-ministry-152726.html)

<sup>3</sup> “Prisons ministry decide to import noose to implement death penalty”, Sunday Times Online, 13 February 2019, [www.sundaytimes.lk/article/1070049/prisons-ministry-decides-to-import-noose-to-implement-death-penalty](http://www.sundaytimes.lk/article/1070049/prisons-ministry-decides-to-import-noose-to-implement-death-penalty); “200 kilo stone to rest new hangman’s noose”, Sunday Times (Sri Lanka), 17 February 2019, [www.pressreader.com/sri-lanka/sunday-times-sri-lanka/20190217/281509342454851](http://www.pressreader.com/sri-lanka/sunday-times-sri-lanka/20190217/281509342454851)

<sup>4</sup> “Sri Lanka might execute drug traffickers caught dealing from prison”, Reuters, 11 June 2018, [www.reuters.com/article/us-sri-lanka-drugs/sri-lanka-might-execute-drug-traffickers-caught-dealing-from-prison-idUSKBN1K11V8](http://www.reuters.com/article/us-sri-lanka-drugs/sri-lanka-might-execute-drug-traffickers-caught-dealing-from-prison-idUSKBN1K11V8), Sandun Jayawardena, “President’s ‘death to drug offenders’ bid hangs in the air”, *The Sunday Times*, 22 July 2018, [www.sundaytimes.lk/180722/news/presidents-death-to-drug-offenders-bid-hangs-in-the-air-303554.html](http://www.sundaytimes.lk/180722/news/presidents-death-to-drug-offenders-bid-hangs-in-the-air-303554.html)

<sup>5</sup> “Thirteen inmates definitely in line for the death penalty”, News 1st, 19 February 2019, [Error! Hyperlink reference not valid.](#)

<sup>6</sup> Human Rights Committee, General Comment 36 (Article 6 of the International Covenant on Civil and Political Rights, on the right to life), UN Doc. CCPR/C/GC/36, para. 50

*death penalty*” (emphasis added).<sup>7</sup> Sri Lanka voted in favour of five of these resolutions, including most recently in December 2018. The resumption of executions would also go against the position taken by Sri Lanka in this and other international forums over many years.

It is additionally concerning that no information has been made publicly available in relation to the cases of those selected by the government for execution. This not only could point to arbitrariness in the selection of the cases, as factors unrelated to the specific offence for which the death penalty was imposed and the alleged deterioration in the law and order situation in the country appear to have been mooted as reasons for the possible resumption of executions;<sup>8</sup> but also poses the question of whether a meaningful consideration of clemency appeals was possible in the cases of the selected prisoners. As noted by the Human Rights Committee in General Comment 36, “No category of sentenced persons can be a priori excluded from such measures of relief, nor should the conditions for attainment of relief be ineffective, unnecessarily burdensome, discriminatory in nature or applied in an arbitrary manner.”<sup>9</sup>

## THE DEATH PENALTY HAS NO UNIQUE DETERRENT EFFECT

There is no evidence to show that the death penalty has a unique deterrent effect, in Sri Lanka or anywhere else in the world. Sri Lanka implemented the death penalty up to 1976 and analysis of crime trends from the preceding years showed that “there had been no observable increase in the rate of homicidal crime during the period of suspension of the death penalty.”<sup>10</sup>

A comprehensive survey of research findings carried out by the UN on the relationship between the death penalty and homicide rates concluded: “[R]esearch has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment. The evidence as a whole still gives no positive support to the deterrent hypothesis”.<sup>11</sup>

Statistics from countries that have abolished the death penalty show that the absence of the death penalty has not resulted in an increase in the crimes previously subject to capital punishment. In Canada, for example, the homicide rate per 100,000 of the population fell from a peak of 3.09 in 1975, the year before the death penalty for murder was abolished, to 2.41 in 1980 and 1.80 in 2017.<sup>12</sup>

In other places such as Iran, for example, the use of the death penalty for drug-related offences was reduced in January 2018, following amendments to the anti-narcotics law, in an acknowledgement that the death penalty does not deter crime.<sup>13</sup> Similarly, in Malaysia, the government announced a review of the country’s death penalty laws and introduced some sentencing discretion in some circumstances of drug trafficking.<sup>14</sup>

The National Research Council of the National Academies in the USA confirmed in its 2012 report that “research to date on the effect of capital punishment on homicide is not informative about whether capital punishment decreases, increases or has no effect on homicide rates. Therefore, the committee<sup>15</sup> recommends that these studies not be used to inform deliberations ... about the effect of the death penalty on homicide.”<sup>16</sup>

A study comparing the murder rates in Hong Kong and Singapore, both of which have a similar size of population, for a 35-year period beginning in 1973, found that the abolition of the death penalty in the former and the high execution rate in the latter in the mid-1990s had little impact on murder levels.<sup>17</sup>

In regards to drug-related crime, evidence shows that punitive policies have little influence on the prevalence of drug use.<sup>18</sup> Research has found that countries that have enacted harsh laws and implemented widespread arrests and imprisonment of drug users, even

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<sup>7</sup> UN General Assembly, Resolution 62/149 of 18 December 2007; 63/168 of 18 December 2008; 65/206 of 20 December 2010; 67/176 of 21 December 2012; 69/186 of 18 December 2014; 71/187 of 19 December 2016; and 73/175 of 17 December 2018

<sup>8</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/69/265, para. 103

<sup>9</sup> Human Rights Committee, UN Doc. CCPR/C/GC/36, para. 47

<sup>10</sup> Amnesty International, *The death penalty*, addenda and update to the *Amnesty International report*, 26 September 1979, p. 98 [www.amnesty.org/download/Documents/204000/act500031979eng.pdf](http://www.amnesty.org/download/Documents/204000/act500031979eng.pdf)

<sup>11</sup> R. Hood, *The question of the death penalty and the new contributions of the criminal sciences to the matter: A report to the United Nations Committee on Crime Prevention and Control*, UN Doc. E/AC.57/1988/CRP.7. The survey was last reviewed and published commercially as R. Hood and C. Hoyle, *The death penalty: A worldwide perspective, fourth edition*, 2015.

<sup>12</sup> Statistics Canada, *Homicide victims, number and rates (per 100,000 population)*, [www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510006801](http://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510006801)

<sup>13</sup> “Iran eases death penalty for drug crimes, saving potentially thousands of lives”, *New York Times*, 10 January 2018, [www.nytimes.com/2018/01/10/world/middleeast/iran-drugs-death-penalty.html](http://www.nytimes.com/2018/01/10/world/middleeast/iran-drugs-death-penalty.html)

<sup>14</sup> Malaysia is introducing discretionary sentencing to drug offences that could reduce the number of persons sentenced to death. Amnesty International, *Death sentences and executions 2017*, [www.amnesty.org/en/latest/news/2018/04/death-penalty-sentences-and-executions-2017/](http://www.amnesty.org/en/latest/news/2018/04/death-penalty-sentences-and-executions-2017/)

<sup>15</sup> Committee on Law and Justice at the National Research Council

<sup>16</sup> D.S. Nagin and J.V. Pepper, eds, *Deterrence and the death penalty*, National Research Council, 2012, p. 2

<sup>17</sup> F.E. Zimring, J. Fagan, D.T. Johnson, *Executions, deterrence and homicide: A tale of two cities*, 2009

<sup>18</sup> L. Degenhardt, W-T Chiu, N. Sampson, R.C. Kessler, J.C. Anthony, et al, “Toward a global view of alcohol, tobacco, cannabis, and cocaine use: Findings from the WHO World Mental Health Surveys”, *PLoS Med* 5(7), 2008, <http://journals.plos.org/plosmedicine/article?id=10.1371%2Fjournal.pmed.0050141>

imposing death sentences, did not show lower levels of drug use and related problems than countries with more tolerant approaches.<sup>19</sup> As the annual world drug reports published by UN Office on Drugs and Crime (UNODC) show, the number of people who use drugs globally has overall remained stable, while harsh punishments have not eliminated or reduced either drug trafficking or drug use.<sup>20</sup>

Use of illicit drugs in Asia, as suggested by UNODC, is at levels similar to or below the global average.<sup>21</sup> By contrast, even though the criminalization of drug-related conducts is intended to deter the use, possession and trafficking of drugs, evidence has shown that such policies encourage and perpetuate high-risk drug use behaviours.<sup>22</sup> Moreover, these policies have promoted a stigmatized approach towards people who use drugs, usually considered to be ill or criminals, which has segregated and further marginalized this sector of the population.<sup>23</sup>

Therefore, there is no factual basis to believe that the death penalty has any more deterrent effect than other punishments such as life imprisonment.

## IMPLEMENTING THE DEATH PENALTY FOR DRUG-RELATED CRIMES VIOLATES INTERNATIONAL LAW

It is of additional concern that the President of Sri Lanka intends to execute people for drug-related offences. In Sri Lanka, the death penalty can be imposed for drug-related offences, including trafficking, importing or exporting more than the legislatively determined amount of prohibited substances.<sup>24</sup>

In countries that have not yet abolished it, international law restricts the use of the death penalty only to the “most serious crimes”.<sup>25</sup>

This restriction has been interpreted as referring to lethal crimes or crimes with extremely grave consequences. As noted by the UN Human Rights Committee in its General Comment 36, “Crimes not resulting directly and intentionally in death, such as [...] drug and sexual offences, although serious in nature, can never serve as the basis, within the framework of article 6, for the imposition of the death penalty.”<sup>26</sup>

## DEATH SENTENCE IS MANDATORY FOR SOME CRIMES IN SRI LANKA

Of further concern is that the death penalty is also a mandatory punishment in Sri Lanka for crimes such as murder,<sup>27</sup> giving false evidence against someone who is sentenced to death as a result of such false evidence,<sup>28</sup> and for abetting suicide.<sup>29</sup> This means that for these offences, the judge has no discretion to award any other sentence or to consider extenuating circumstances in sentencing.

## AGAINST THE GLOBAL TREND

The resumption of executions would further put Sri Lanka at odds with the global trend which remains in favour of the abolition of the death penalty. Seventy years after the adoption of the Universal Declaration of Human Rights (“the Declaration”), the trend towards worldwide abolition of the death penalty is unmistakable. As of today, 142 countries – more than two-thirds of the world’s countries – have abolished the death penalty in law or practice.<sup>30</sup>

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<sup>19</sup> Global Commission on Drug Policy, *War on drugs*, June 2011, [www.globalcommissionondrugs.org/wp-content/themes/gcdp\\_v1/pdf/Global\\_Commission\\_Report\\_English.pdf](http://www.globalcommissionondrugs.org/wp-content/themes/gcdp_v1/pdf/Global_Commission_Report_English.pdf)

<sup>20</sup> For more information, see annual *World drug reports* produced by UNODC, [www.unodc.org/wdr2015/](http://www.unodc.org/wdr2015/)

<sup>21</sup> UNODC, *World drug report 2015*, p. 15

<sup>22</sup> J. Csete *et al*, “Public health and international drug policy”, *The Lancet*, April 2016

<sup>23</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Mission to Viet Nam, 4 June 2012, UN Doc. A/HRC/20/15/Add.2, para. 45

<sup>24</sup> Poisons, Opium and Dangerous Drugs (Amendment) Act of Sri Lanka No. 13 of 1984, sections 5, 14 read with schedule 3.

<sup>25</sup> Article 6(2) of ICCPR; Safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the UN Economic and Social Council in Resolution 1984/50 of 25 May 1984

<sup>26</sup> Human Rights Committee, General Comment 36 (Article 6 of the International Covenant on Civil and Political Rights, on the right to life), UN Doc. CCPR/C/GC/36, para. 35

<sup>27</sup> Penal Code of Sri Lanka, 1885, sections 294-296, as amended

<sup>28</sup> Penal Code of Sri Lanka, 1885, sections 294-296, as amended

<sup>29</sup> Penal Code of Sri Lanka, 1885, sections 294-296, as amended

<sup>30</sup> For more information, see Amnesty International, *Abolitionist and retentionist countries (as of July 2018)* (Index: ACT 50/6665/2017)

When the Declaration was adopted in 1948, only eight countries had abolished the death penalty for all crimes: Colombia (1910), Costa Rica (1877), Ecuador (1906), Iceland (1928), Panama (1922), San Marino (1865), Uruguay (1907) and Venezuela (1863). In 1977, when Amnesty International began campaigning against the death penalty, only 16 countries were abolitionist for all crimes; today that number is 106. More than 30 of these became fully abolitionist in the 21st century. Additionally, the US states of Connecticut, Delaware, Illinois, Maryland, New Jersey, New Mexico, New York and Washington have all abolished the death penalty since the beginning of the millennium.

Amnesty International's report on the global use of the death penalty in 2017 shows that the weight of the death penalty is carried by an isolated group of countries.<sup>31</sup> Executions were reported in 23 countries worldwide, 12% of the world total. Of these executing countries, only 11, or 6%, were "persistent" executioners, meaning that they carried out executions every year in the previous five years. While China, where figures on the death penalty were classified as a state secret, remained the lead executioner and was believed to have carried out thousands of executions, it is significant that 84% of all recorded executions were reported in only four countries: Iran, Iraq, Pakistan and Saudi Arabia. Iran alone accounted for more than half of all recorded executions. The total number of countries imposing death sentences also decreased down from 55 in 2016 to 53 in 2017.

The global trends highlighted above were also reflected in the Asia-Pacific region, where nine countries carried out executions in 2017, out of 22 that still retain it in law. In the Pacific, only Papua New Guinea and Tonga retain this punishment on their law books, after Fiji and Nauru abolished the death penalty for all crimes in 2015 and 2016, respectively. However, Papua New Guinea held people on death row and an indefinite stay of executions was put in place by its National Court, after it concluded the country's use of the death penalty violated human rights safeguards enshrined in the country's Constitution.

In 2017, Guinea and Mongolia both abolished the death penalty for all crimes and Guatemala became abolitionist for ordinary crimes only. In February 2018, the President of Gambia declared an official moratorium on executions.<sup>32</sup> The country carried out its last executions in 2012, but under the leadership of its new administration it ratified the Second Optional Protocol to the ICCPR in September 2018. In June 2018, Burkina Faso abolished the death penalty for all crimes and in July the Government of Malaysia announced a moratorium on all executions.

## THE DEATH PENALTY: A CRUEL AND IRREVERSIBLE PUNISHMENT

The death penalty is irreversible. It is cruel, and those who are condemned to die in many cases spend years on death row, waiting for the punishment to be carried out. An execution constitutes an extreme physical and mental assault on a person already rendered helpless by government authorities. It is state-sponsored killing of individuals.

Once the death penalty is implemented there is no possibility of a redress in the event of new information emerging, a flawed judicial process being challenged or even extenuating circumstances being considered.

There is no reversal of this punishment, and we rely on a judicial and criminal justice system to be perfect, equal and equitable at all times, and for all individuals brought before it. As long as the death penalty exists, the risk of executing the innocent can never be eliminated.

## THE DEATH PENALTY COULD BE IMPOSED AFTER UNFAIR TRIALS

Amnesty International is concerned that judicial proceedings in Sri Lanka may have not met international standards for a fair trial and resulted in the imposition of the death penalty.

The National Human Rights Commission of Sri Lanka noted on the basis of the complaints it received that "torture is routinely used in all parts of the country regardless of the nature of the suspected offence for which the person is arrested. For instance, those arrested on suspicion of robbery, possession of drugs, assault, treasure hunting, dispute with family/spouse, have been subjected to torture. The prevailing culture of impunity where those accused of torture is concerned is also a contributing factor to the routine use of torture as a means of interrogation and investigation."<sup>33</sup> It further stated that one of the most common violations of due process that was shared across many of the complaints was the failure to produce the arrested person before a magistrate within 24 hours of arrest; and altering the time of arrest in their official records.<sup>34</sup> International law requires that everyone arrested or detained in connection with a criminal charge must be brought promptly before a judge or other judicial officer, so that their rights can be protected.<sup>35</sup> Judicial oversight of

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<sup>31</sup> Amnesty International, *Death sentences and executions in 2017* (Index: ACT 50/7955/2018)

<sup>32</sup> "Gambia announces moratorium on death penalty", Reuters, 18 February 2018, [www.reuters.com/article/us-gambia-justice/gambia-announces-moratorium-on-death-penalty-idUSKCN1G20V2](http://www.reuters.com/article/us-gambia-justice/gambia-announces-moratorium-on-death-penalty-idUSKCN1G20V2)

<sup>33</sup> National Human Rights Commission of Sri Lanka, *Report of the Human Rights Commission to the Committee against Torture – Review of the 5<sup>th</sup> Periodic Report of Sri Lanka*, October 2016, para. 13 <http://hrcls.lk/english/wp-content/uploads/2016/11/Report-to-CAT-Committee-.pdf>

<sup>34</sup> National Human Rights Commission of Sri Lanka, *Report of the Human Rights Commission to the Committee against Torture – Review of the 5<sup>th</sup> Periodic Report of Sri Lanka*, October 2016, para. 13 <http://hrcls.lk/english/wp-content/uploads/2016/11/Report-to-CAT-Committee-.pdf>, para. 19

<sup>35</sup> Article 9(3) of the ICCPR

detention serves to safeguard the presumption of innocence and also aims to prevent human rights violations including torture or other ill-treatment.

The widespread use of torture, and possible reliance on “confessions” extracted under torture, directly affects the right to a fair trial of every individual. The denial of a fair trial denies individuals the right to equality before the law and the right to due process.<sup>36</sup>

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka has similarly commented on the use of torture that could lead to “confessions” extracted under torture:

“Most torture survivors indicated that the acts of torture ceased after they confessed, which sometimes included signing blank papers or documents in a language they could not read.”<sup>37</sup>

The Special Rapporteur in his 2016 report has also commented on the routine use of torture in criminal investigations, although the ordinary criminal law does not permit the admission of evidence extracted under torture. He said:

“The heavy reliance of the criminal justice system on confession as the primary tool of investigation is a major incentive for torture. On the basis of detainee interviews, the Special Rapporteur is concerned that it is routine practice for the police to extract confessions under duress. The Special Rapporteur is moreover very concerned at judges’ willingness to admit confessions in criminal proceedings without corroboration by other evidence, creating conditions that further encourage torture and ill-treatment.”<sup>38</sup>

The Special Rapporteur on torture has also commented in his mission report of 2017 on the willingness of judges to admit such evidence in criminal proceedings. The report raises the concerns on “judges’ willingness to admit forced ‘confessions’ in criminal proceedings without corroboration by other evidence, creating conditions that further encourage torture and ill-treatment.”<sup>39</sup>

Mónica Pinto, UN Special Rapporteur on the Independence of judges and lawyers, in her report issued in 2017 recommended to Sri Lanka to improve the independence, quality and credibility of the judiciary, on “transparent, decentralized and democratic” administration of justice.<sup>40</sup> The findings in the report of the Special Rapporteur are supported by other independent reports that come to similar conclusions. For example, in a report published in 2009, the International Bar Association found that there was intimidation of lawyers, serious issues in relation to the independence of the judiciary and a declining public confidence in the judicial system.<sup>41</sup> Amnesty International itself has recorded intimidation and threats against witnesses in the “Trinco-5” murder case, where the father of one of the murdered young men had to flee the country for his own safety and that of his family.<sup>42</sup>

The possibility that a skewed justice process could lead to a cruel and irreversible sentence being handed out, and even worse, the possibility that such a sentence could be implemented, is alarming. It would lead to a grave and irreversible miscarriage of justice and would violate the right to a fair trial of those who are thus condemned to death.

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<sup>36</sup> Article 14 of the ICCPR guarantees the right to be equal before courts and tribunals, and the right to a “fair and public hearing by a competent, independent and impartial tribunal established by law”, in Article 14, ICCPR, Adopted by the General Assembly of the United Nations on 19 December 1966. Article 14(1)-(7) describes the due process that must be guaranteed during a trial. Also discussed in Amnesty International, *The death penalty v. human rights: Why abolish the death penalty?* (September 2007), [www.amnesty.org/download/Documents/56000/act510022007en.pdf](http://www.amnesty.org/download/Documents/56000/act510022007en.pdf)

<sup>37</sup> Human Rights Council, 34<sup>th</sup> Session, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka* (2017), UN Doc. A/HRC/34/54/Add.2, para. 27, [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/34/54/Add.2](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/54/Add.2)

<sup>38</sup> Human Rights Council, 34<sup>th</sup> Session, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka* (2017), UN Doc. A/HRC/34/54/Add.2, paras 80-81, [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/34/54/Add.2](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/54/Add.2)

<sup>39</sup> Human Rights Council, 34<sup>th</sup> Session, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka* (2017), UN Doc. A/HRC/34/54/Add.2, para 81, [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/34/54/Add.2](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/54/Add.2)

<sup>40</sup> Report of Special Rapporteur Mónica Pinto on her mission to Sri Lanka from 29 April to 7 May 2016. Mission conducted jointly with the Special Rapporteur on Torture, Juan E. Méndez, para 96, <https://digitallibrary.un.org/record/1301719?ln=en>

<sup>41</sup> International Bar Association, *Justice in retreat: A report on the independence of the legal profession and the rule of law in Sri Lanka*, May 2009, [www.ibanet.org/Article/NewDetail.aspx?ArticleUid=7DF2962F-7769-4FAF-8E16-6371B408C174](http://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=7DF2962F-7769-4FAF-8E16-6371B408C174)

<sup>42</sup> Amnesty International, *New Amnesty report reveals inability of Sri Lankan government to deliver justice* (Press release, 11 June 2009), [www.amnesty.org.uk/press-releases/sri-lanka-new-amnesty-report-reveals-inability-sri-lankan-government-deliver-justice](http://www.amnesty.org.uk/press-releases/sri-lanka-new-amnesty-report-reveals-inability-sri-lankan-government-deliver-justice)

# THE BURDEN OF THE DEATH PENALTY IS DISPROPORTIONATELY CARRIED BY THOSE WITH LESS ADVANTAGED SOCIOECONOMIC BACKGROUNDS OR BELONGING TO MINORITIES

People who are socioeconomically less advantaged or belonging to minorities and therefore unable to produce a strong defence, are more likely to be sentenced to death. According to UN Experts,<sup>43</sup> “If you are poor, the chances of being sentenced to death are immensely higher than if you are rich”.<sup>44</sup>

Amnesty International has found that people who are from less advantaged socioeconomic backgrounds, or belonging to racial, ethnic or religious minorities, are disproportionately vulnerable to being sentenced to death.<sup>45</sup> Research into the use of the death penalty has long shown that those living in poverty or with less financial means are often unable to enjoy their right to competent and effective legal counsel, at all stages of the proceedings. Defendants from disadvantaged socioeconomic backgrounds were in numerous cases unable to engage or retain competent legal representation, as well as enjoy the much-needed support of forensic and medical experts to prepare their defence. A comprehensive study by the National Law University in Delhi on death rows in India has shown, for example, that low literacy levels among prisoners facing the death penalty, as well as their marginalized or absent social networks, can in some cases be a factor influencing their understanding of, and engagement with, the judicial institutions and their own legal representatives. This in turn has the effect of further disempowering and marginalizing certain sections of society, along lines of class, gender, caste, religion and levels of educational attainment.<sup>46</sup>

Similarly, an Amnesty International report on the death penalty in Saudi Arabia highlighted the importance of social networks in getting the death sentence commuted. Only those able to influence the victims’ relatives through power or money, or a combination of both, through kinship or friendship, or through good fortune, succeed in obtaining a pardon from the relatives of the crime victim, avoiding the execution – the help of legal representatives in these negotiations is not enough in itself. Migrant workers typically lack relationships and resources that could facilitate the issuing of a pardon and are therefore, in the great majority of cases, unable to obtain one. Of the 104 cases Amnesty International analysed between 2000 and 2008 in Saudi Arabia and in which pardons were granted, 92 were Saudi Arabian nationals.<sup>47</sup>

Sri Lanka’s judiciary has been criticized by Mónica Pinto, UN Special Rapporteur on the Independence of Judges and Lawyers, in her report issued in 2017, where she points out several issues which affect the right to a fair trial of individuals.<sup>48</sup> Her report highlighted issues of language competency in the courts, which discriminates against Tamil-speaking people. With the majority of court proceedings even in the north and east of the country conducted in Sinhala, combined with judicial, legal and police officers who have no Tamil language skills,<sup>49</sup> those who do not speak Sinhala may be denied the right to a fair trial. This also raises concerns as to the representativeness of the bench and the bar in terms of racial, ethnic and religious minorities in the country.

In its 2016 submission to the UN Committee against Torture, Sri Lanka’s National Human Rights Commission also echoes such concerns, noting that “there is a shortage of Tamil interpreters in the justice system as well as at police stations, which can adversely impact upon the due process and fair trial rights of detainees.”<sup>50</sup>

As Amnesty International has previously stated, “No criminal justice system is, or conceivably could be, capable of deciding fairly, consistently and infallibly who should live and who should die”.<sup>51</sup> Life or death is determined not just by the crime and the factual

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<sup>43</sup> In this case, Agnes Callamard, [Special Rapporteur on extrajudicial, summary or arbitrary executions](#); the [Working Group on discrimination against women](#); Felipe González Morales, [Special Rapporteur on the human rights of migrants](#); Philip Alston, [Special Rapporteur on extreme poverty](#); Mutuma Ruteere, [Special Rapporteur on racism](#); and the [Working Group on people of African descent](#), [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22208&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22208&LangID=E)

<sup>44</sup> OHCHR, *Death penalty disproportionately affects the poor, UN rights experts warn*, 10 October 2017, [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22208&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22208&LangID=E)

<sup>45</sup> Amnesty International, *What we do*, [www.amnesty.org/en/what-we-do/death-penalty/](http://www.amnesty.org/en/what-we-do/death-penalty/)

<sup>46</sup> National Law University, “Death Penalty India Report”, Delhi Press, February 2016, vol. I

<sup>47</sup> Amnesty International, *Killing in the name of justice – the death penalty in Saudi Arabia* (Index: MDE 23/2092/2015). Similar conclusions were drawn from the analysis of media reports of cases of such pardons granted after 2008.

<sup>48</sup> Report of Special Rapporteur Mónica Pinto on her mission to Sri Lanka from 29 April to 7 May 2016. Mission conducted jointly with the Special Rapporteur on Torture, Juan E. Méndez.

<https://digitallibrary.un.org/record/1301719?ln=en>

<sup>49</sup> Report of Special Rapporteur Mónica Pinto on her mission to Sri Lanka from 29 April to 7 May 2016. Mission conducted jointly with the Special Rapporteur on torture, Juan E. Méndez, p. 11, para. 60

<sup>50</sup> National Human Rights Commission of Sri Lanka, *Report of the Human Rights Commission to the Committee against Torture – Review of the 5th Periodic Report of Sri Lanka*, October 2016, para. 24

<sup>51</sup> Amnesty International, *Death penalty: Questions and answers*, p. 6, [www.amnesty.org.uk/files/8\\_amnesty\\_death\\_penalty\\_qa\\_2007.pdf](http://www.amnesty.org.uk/files/8_amnesty_death_penalty_qa_2007.pdf)

circumstances, but also by issues that should have no place in such a determination, such as ethnic, religious or social background, or the economic background or political affiliations of a defendant.<sup>52</sup>

## CONCLUSIONS AND RECOMMENDATIONS

Sri Lanka is one of the few South Asian nations that has not carried out executions for 42 years. It has, along with many other countries globally, suspended this cruel and inhuman punishment for four decades. It is clear that by resuming executions for drug-related offences not only will Sri Lanka violate international law, but also taint its positive long-established death penalty records.

The death penalty is irreversible. It is cruel, and inhuman. Sri Lanka must not regress after 42 years. The death penalty is abominable, in all circumstances, everywhere, without exception. Amnesty International urges the Government of Sri Lanka to:

- abolish the death penalty for all crimes;
- pending full abolition, halt all plans to carry out executions;
- establish an official moratorium on executions and commute all death sentences;
- ratify the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty.

<sup>52</sup> Amnesty International, *The death penalty v. human rights: Why abolish the death penalty?* (September 2007), AI Index: ACT 51/002/2007 [p. 7](https://www.amnesty.org/download/Documents/56000/act510022007en.pdf).

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