

## **Submission to the Working Group on Arbitrary Detention: Study on arbitrary detention relating to drug policies**

**1. Please provide information concerning the number of people held in pre-trial detention as well as the number of those who are imprisoned pursuant to a conviction for drug-related offences. Please indicate what percentage of the total pre-trial detention population are being held for drug-related offences. Please identify the percentage of the total prison population who have been convicted and imprisoned for drug-related offences. For those convicted of drug-related offences, what percentage of this group have been imprisoned for acquisition, use or possession of drugs for personal use? How many people convicted of drug use belong to disadvantaged groups (e.g. women, pregnant women, children and youth, indigenous people, sex workers, lesbian, gay, bisexual, transgender (LGBT) persons, homeless people, people with HIV/AIDS, persons with disabilities, ethnic minorities, migrant communities)?**

According to the 2020 prisons statistics of the Department of Prisons in Sri Lanka, of 29,164 of the total direct admissions of convicted prisoners, the number of direct admissions of convicted prisoners for drug offences is 15,123. . The percentage of prisoners convicted for drug offences of the total number of convicted prisoners is therefore 51.9%.

The statistics do not distinguish between persons who were convicted for the possession of drugs and those convicted for drug trafficking. However, according to the statistics, 10,799 prisoners (71.4%) of the 15,123 prisoners convicted for drug offences, were serving a sentence of one to six months in prison and another 2,627 (17.4%) prisoners were sentenced for six to twelve months in prison; therefore about 88.8% of the drug offenders received a sentence of up to one year. Fifteen prisoners were sentenced to death and thirty-eight prisoners were sentenced to life imprisonment for drug offences.

As the penalty for the offence of drug trafficking is the death penalty or life imprisonment (discussed in detail below), and the offence of possession or consumption is a summary offence that carries a maximum penalty of five years imprisonment and/or a fine not exceeding LKR 10,000, it may be inferred that 88.8% of the prisoners convicted for drug offences were convicted for the offence of possession or consumption.

**2. Does your State consider the acquisition, use or possession of drugs for personal use a minor offence within the meaning of this term as set out in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (article 3, para. 4 (c)? If so, what percentage of people arrested for the acquisition, use or possession for personal use of drugs are diverted out of the criminal justice system, and what alternative measures, if any, are such people subjected to?**

Possession and consumption of drugs is an offence outlined in Section 52 of the Poisons, Opium, and Dangerous Drugs Ordinance, which states that (1) no person shall obtain or have in his possession any dangerous drug except as permitted by, or otherwise than in accordance with, the provisions of this Chapter or a licence of the Director, and (2) no person shall knowingly consume any dangerous drug, unless it is supplied to him for the purpose by a medical practitioner.

The penalty for the offences outlined in Section 52(1) and (2) is stipulated in Section 78 of the same Ordinance:

- (a) On summary conviction by a Magistrate, to a fine not less than one thousand rupees and not exceeding ten thousand rupees or to imprisonment of either description for a period not exceeding five years or to both such fine and imprisonment;
- (b) On conviction before the High Court, to a fine not less than ten thousand rupees and not exceeding twenty-five thousand rupees or to imprisonment of either description for a period not less than six months and not exceeding seven years, or to both such fine and imprisonment.

The offence of consumption and possession of drugs is thus not considered a minor offence as per the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 by default, due to the penalties it carries. However, according to law it is possible for alternatives to imprisonment, such as non-custodial drug rehabilitation treatment, to be used by judges to divert the offender to substance abuse treatment rather than imprison them. These options are outlined in the Community Based Corrections (CBC) Act, where an offender may be issued a CBC Order in lieu of imprisonment for an offence that does not require mandatory imprisonment for an offence which carries a sentence of less than two years imprisonment.<sup>1</sup> As the offence of possession and consumption of drugs falls within this threshold, judges can opt for a non-custodial punishment and stipulate community service or mandatory rehabilitation to be a condition of the Order – particularly where persons are found to be drug dependent as proven by medical assessment.

However, the provisions of the CBC remain vastly underutilised in the criminal justice process and therefore drug offenders convicted for consumption or possession of drugs are largely subjected to fines and/or imprisonment as a form of punishment. Of the total number of persons punished for drug offenders, there is no data on the number of persons diverted to non-custodial measures as punishment rather than imprisonment.

**3. Has your State decriminalized the acquisition, use or possession of illegal drugs for personal use? If so, to what drugs does this apply and what are the amounts considered to be for personal use? What is the legislative or judicial basis for such decriminalization? If decriminalization has not taken place, what penalties apply to the acquisition, use or possession of illegal drugs for personal use?**

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<sup>1</sup> Section 5 of the Community Based Corrections Act (No. 46 of 1999)

The acquisition, use and possession of all illegal drugs remains an offence in Sri Lanka. The penalties applicable include, as discussed above:

- (a) On summary conviction by a Magistrate, a fine not less than one thousand rupees and not exceeding ten thousand rupees or to imprisonment of either description for a period not exceeding five years or to both such fine and imprisonment;
- (b) On conviction before the High Court, a fine not less than ten thousand rupees and not exceeding twenty-five thousand rupees or to imprisonment of either description for a period not less than six months and not exceeding seven years, or to both such fine and imprisonment.

**4. What types of circumstances have led to unlawful and arbitrary arrest of people in your State for drug-related offences? What structures/institutions are in place so that people who are arrested for a drug-related offence can make a complaint about unlawful and arbitrary arrest and detention, or the threat thereof?**

One observable pattern in the arrest of persons for drug related offences is that persons who are caught in the possession of a quantity of drugs are often charged by the police with the offence of drug trafficking under Section 54 of the Poisons, Opium, and Dangerous Drugs Ordinance. No assessment or evaluation is conducted of whether the drugs in question were in the suspect's possession for their personal use or for sale prior to the charge.

Although, according to the Bail Act, bail is the norm and refusal is supposed to be exceptional, as per Section 83 Poisons, Opium, and Dangerous Drugs Ordinance persons suspected of committing the offence of drug trafficking and sale cannot be released on bail (except by the High Court due to exceptional circumstances). Thus, persons charged with the offence of sale and trafficking drugs are required to remain in remand prison until the conclusion of their trial and cannot be released on bail. The trial process can take several months for cases concerning minor quantities of drugs, and several years for cases involving larger quantities of narcotic substances. For instance, a person arrested with 675mg of heroin had been in remand for about nine months awaiting indictment, whereas a person arrested in a case involving 500g of heroin was in remand for eleven years until he was sentenced to life imprisonment.<sup>2</sup>

The prolonged period of detention and undue delays in the case proceedings, due to lack of human resources and administrative delays at the Government Analyst Department and the Attorney General's Department, could constitute arbitrary detention. The Government Analyst Department, which is overburdened and grappling with a backlog of thousands of cases, is required to assess the quantity/purity of the narcotic substances for which the suspect was arrested before the Attorney-General's Department decides whether charges

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<sup>2</sup> Personal observations of former Human Rights Commissioner, Ambika Satkunanathan, who led the first ever national study of prisons conducted by the Commission from 2018 to 2019. She is currently a Senior Advisor to Freedoms Collective.

are to be filed. Until the report of the Government Analyst Department is issued the suspect is required to remain in remand prison.

Drug offenders may lodge a fundamental rights petition at the Supreme Court, alleging that the prolonged pre-trial detention is a curb on their freedom from arbitrary arrest, detention and punishment guaranteed by Article 13 of the Constitution. However, a remand prisoner would have to hire legal representation, which will add to their cost of legal fees. Further, the petition at the Supreme Court would usually take a number of months to be concluded, if granted leave to proceed.

- 5. Does your State differentiate in its criminal procedures for persons alleged to have committed drug-related offences compared to those who have been arrested for other types of criminal offences? For example, are persons arrested for drug-related offences held in custody longer than persons arrested for other offences before being charged or before being brought before a judge to determine the legality of their arrest? Are persons charged with drug-related offences automatically held in pre-trial detention until trial? Is legal aid available for persons charged with drug-related offences in similar circumstances to which it would be available for other criminal offences? Does your State allow persons convicted of drug-related offences to be considered for suspended sentence, sentence reduction, parole, release on compassionate grounds, pardon or amnesty that are available to those who are convicted of other crimes? Are legal presumptions used so that persons found with amounts of drugs above specified<sup>3</sup> thresholds, or in possession of keys to a building or vehicle where drugs are found, are presumed to have committed an offence?**

Certain legal provisions and procedures exist within the criminal justice and incarceration process that only apply to drug offenders.

1. Prolonged detention in police custody

While the general rule is that all suspects arrested by the police must be produced before a judge within twenty-four hours of the arrest, Section 82 of the Poisons, Opium, and Dangerous Drugs Ordinance allows persons arrested for offences involving 'dangerous drugs'<sup>4</sup> to be held in police custody for seven days, on the basis of a judicial order, in order to continue investigations.

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<sup>3</sup> Examples of arbitrary arrest and detention could include threatening arrest and detention if the person who uses drugs or is a minor dealer does not give money to law enforcement, or in the case of women give money and/or sex; accessing a person's health records as a means of determining if a person uses drugs; targeting arrests areas at or near drug treatment centres for people who use drugs; disproportionately targeting minorities, women or poor people for possible drug-related offences; excessive use of force during drug enforcement operations.

<sup>4</sup> Groups A, B, C, D and E in Part I of the Third Schedule of the Poisons, Opium, and Dangerous Drugs Ordinance

## 2. Pre-trial detention

As discussed above, most suspects arrested with a quantity of illegal drugs may be charged with the offence of sale or trafficking drugs rather than possession or use, and as the former denies bail to suspects they have to remain in pre-trial detention until the conclusion of the trial. Drug offenders are hence subjected to de facto automatic pre-trial detention. Once the Government Analyst Report for their case on the quantity of drugs found in their possession is issued, persons possessing only minor quantities of drugs may be released upon the payment of a fine. Persons thus spend several months in remand prison, for an offence that may only carry a fine as penalty.

Where the offence of drug trafficking is concerned, a person may apply for bail citing exceptional circumstances once they have been indicted for the offence. However, no clear guidelines exist as to what constitutes exceptional circumstances. The judgement of Justice Eric Basanayake in the case *Cader vs OIC Narcotics Bureau*<sup>5</sup> demonstrates judicial attitudes towards the consideration of bail for persons charged with drug offences. The decision states, “These type of offences affect the society at large. The law should not be made impotent that it does not serve the society and the antisocial elements should not be given licence to create havoc in society. Law should be interpreted in such a manner that it gives protection to the society from anti-social elements which create havoc. Otherwise lawlessness and anti-social elements would affect the fibre of the society as a whole”.

As a result, persons arrested for cases involving large quantities of heroin may be held in remand for many years until the conclusion of their trial as bail cannot be granted unless exceptional circumstances can be proven before the court.

## 3. Legal Aid for drug offenders

The Legal Aid Commission in Sri Lanka provides legal aid for persons who cannot afford to hire legal representation. However, it is the unofficial policy of the Commission not to provide legal assistance to persons arrested for drug offences and other serious crimes<sup>6</sup>.

## 4. Alleged planting of evidence to arrest and detain

Another phenomenon that has been noted is the allegation that police officers often threaten to plant evidence (i.e. drugs) on persons to justify arrest and detention, since the offence of drug trafficking is non-bailable.

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<sup>5</sup> CA 123/2005

<sup>6</sup> Report of the Human Rights Commission of Sri Lanka to the UN Committee Against Torture, October 2016.

## 5. The threshold of 2 grams

An important practice with regard to the criminal justice process, is the minimum threshold of 2 grams in heroin cases – whereby persons who are found in the possession of more than 2 grams of heroin are indicted for the offence of drug trafficking, which carries a maximum penalty of death and requires the suspect to be remanded without bail until the conclusion of the trial. The threshold of 2 grams is an arbitrary decision and persons are charged with drug trafficking without an objective assessment of whether they were merely in the possession of this quantity for their own consumption, or if they were engaged in the sale of drugs. Due to the inherent shortcomings and delays in the legal and judicial process, suspects may be held in remand custody for a number of years until the conclusion of their trial.

## 6. Drug offenders in prison

It must also be highlighted that drug offenders face differential treatment due to their offence, even after they are incarcerated.

For instance, convicted prisoners who can demonstrate that they have been rehabilitated during their sentence and have maintained good conduct in prison are eligible for early release on license upon the completion of half their sentence. However, by virtue of the Department of Prisons Circular 27/2017, drug offenders that have been convicted for narcotic substances, such as heroin, are barred from being eligible for early release on license and are required to complete their full sentence.

Similarly, general pardons or general amnesties are issued through the executive power of the President to grant a pardon or remit the whole or any part of the punishment imposed for an offence under Article 34 of the Constitution of Sri Lanka. In order to mark special observances, such as Independence Day and religious festivals, prisoners convicted for minor offences who are able to fulfil certain stipulated criteria would be pardoned by the President. A list of grave offences compiled by the Ministry of Justice highlights the offences for which prisoners cannot be released by way of general pardons, and all offences under the Poison, Opium and Dangerous Drugs Ordinance are included in the list, which results in drug offenders being restricted from enjoying such pardons.

## 7. Resumption of executions for drug offenders

In 2019, the former president of Sri Lanka Mr. Maithripala Sirisena announced his intention to lift the moratorium on executions that had been in place in Sri Lanka since 1976. He stated that persons who are serving death sentences for drug trafficking would be executed and the purpose of this policy was to combat the increasing problem of international drug trafficking for which Sri Lanka had become a regional hub. This proclamation was challenged via a fundamental rights petition to the Supreme Court by the prisoners serving death sentences for drug offences as well as civil society organisations that advocated for abolition of the death penalty, alleging that by resuming executions only for drug offenders,

they were being subject to unequal treatment before the law.<sup>7</sup> The implementation of the death penalty would also violate Article 11 of the Constitution, which guarantees protection from torture. The Supreme Court is yet to determine whether to grant leave to proceed but has issued an interim injunction against resuming executions.

**6. Have there been cases of torture or other cruel, inhuman or degrading treatment or punishment for persons arrested and detained on drug-related offences, with the objective, for example, to elicit a confession or to learn information about other alleged criminal actors or networks? Have there been cases where opioid substitution therapy has been withheld from drug dependent detainees in order to elicit a confession, or obtain information concerning other alleged criminal or networks? What procedures exist to prevent torture and other forms of ill treatment of people detained for drug-related offences, and to bring to justice those responsible when it does occur? What monitoring measures are in place to ensure that torture or other cruel, inhuman or degrading treatment or punishment does not take place? What avenues do detainees have for making a formal complaint to an independent authority if such practices occur?**

Assault in police custody is a common occurrence in the criminal justice system; the complaints received by the Human Rights Commission illustrate that torture is routinely used in all parts of the country either to elicit information or to punish the offender.<sup>8</sup> Such a practice is also widespread where drug offenders are concerned.

Other allegations by drug offenders include the complaints by female offenders who alleged that during arrest, female police officers carried out intrusive and unlawful body cavity searches in their homes – even before being charged with any offences. Complainants reported suffering injuries due to such unlawful practices.

Unconvicted prisoners remanded for drug offences alleged that they are subjected to discriminatory treatment inside prisons. For instance, they stated that drug offenders are slapped upon admission – a practice termed as welcome slap – in some prisons as a form of punishment and to denigrate a suspect for their charge.<sup>9</sup>

It has also been observed that drug dependent individuals who are remanded, and may inadvertently cause disturbances due to drug withdrawal symptoms, are often subjected to unlawful physical force amounting to torture, cruel inhuman and degrading treatment as a measure of dealing with such disturbances instead of utilising proper medical treatment to deal with such drug withdrawal.<sup>10</sup>

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<sup>7</sup> Article 12 of the Constitution of Sri Lanka guarantees the right to equality before the law and equal protection before the law.

<sup>8</sup> Report of the Human Rights Commission of Sri Lanka to the UN Committee Against Torture, October 2016

<sup>9</sup> Personal observations of former Human Rights Commissioner, Ambika Satkunanathan, who led the first ever national study of prisons conducted by the Commission from 2018 to 2019. She is currently a Senior Advisor to Freedoms Collective.

<sup>10</sup> Ibid.

Persons subject to such treatment have the option to complain to the Human Rights Commission of Sri Lanka, which is the NHRI and designated national mechanism for the prevention of torture under the Optional Protocol to the UN Convention Against Torture. The HRCSL is an independent Commission mandated to investigate complaints of fundamental human rights violations and issue recommendations against the state actors concerned, and in the case of torture complaints, determine the compensation for the victim. As the Human Rights Commission of Sri Lanka does not have enforcing powers, it cannot compel the respondent party to fulfil the recommendation and pay compensation to the aggrieved party. Where the relevant party fails to give effect to the recommendation of the Commission, the Commission is required to make a full report of the facts to the President, who ensures the report is also placed before the Parliament.<sup>11</sup>

However, detainees are not able to directly access the Commission due to the lack of means of communication within prisons and police stations, and are dependent on family members to lodge a complaint to the Commission on their behalf. Alternatively, the Commission conducts routine visits to places of detention during which persons may complain about the treatment they suffered, but due to the lack of officers and funding the Commission struggles to conduct frequent visits to all places of detention.<sup>12</sup>

**7. Does your State operate compulsory drug treatment centres? If so, what is the legislative basis for such deprivation of liberty? What procedures exist to ensure procedural guarantees are respected prior to confinement in such centres, including whether the detainee has the right to be represented by legal counsel and the right to appeal the decision on compulsory treatment. Is there a medical evaluation of the person's drug dependency prior to confinement? Is treatment in such centres individualized (as opposed to en masse treatment), evidence-based and in conformity with generally accepted medical practices for drug treatment as articulated by World Health Organization (WHO). Is a person detained in such a facility for a specific amount of time, or indefinitely until treatment has been determined to be successful? Can a person, or by way of his or her legal representative, or a family member, file a petition either with an administrative or criminal court for a hearing on his or her release while detained?**

Treatment centres are administrated by the National Dangerous Drug Control Board (NDDCB) where persons in need of treatment for substance dependency may be referred to by the court or the Department of CBC. The discretion to refer an individual to a treatment centre rather than a correctional institution lies with the court, and it is unclear what factors are considered by a judge when making the assessment. However, very few treatment centres are operated by the NDDCB due to the lack of resources allocated to them and not all persons who require treatment can be admitted to these centres.

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<sup>11</sup> Section 15(8) of the Human Rights Commission of Sri Lanka Act (No. 21 of 1996)

<sup>12</sup> Ibid.



Drug treatment centres that persons can be referred to include the Kantharkadu Drug Rehabilitation Camp, a former rehabilitation centre for former LTTE combatants, which is still administered by the security forces.

- 8. Do private drug treatment centres exist in your State? What steps does your State take to ensure that treatment in such facilities is voluntary and not a result of coercion? How is the informed consent for treatment obtained? How regularly do independent inspections of private drug treatment facilities take place to ensure that practices that constitute torture or other cruel, inhuman or degrading treatment or punishment do not occur? Do inspections of such facilities include a determination whether treatment is individualized (as opposed to treatment en masse), evidence-based and in conformity with generally accepted medical practices for drug treatment as elaborated by WHO? What guarantees exist that a person who has either voluntarily sought treatment or who has been coercively confined in a private drug treatment centre can freely leave if he or she so wishes? Can such persons make a complaint to inspectors who monitor such facilities or a competent authority if a person who is seeking to leave a private drug treatment centre is prevented from doing so? Are there any criminal or other penalties for failure to complete the treatment?**

The author is not in possession of adequate first-hand information on this subject matter.

- 9. Do drug courts which seek to use treatment as an alternative to imprisonment exist in your State? Please describe their operations, including applicable procedural guarantees for the accused. Does the accused have to plead guilty to the drug-related offence prior to being diverted into treatment? Are only accused persons who are drug dependent on opioids diverted for treatment, or are people who use other drugs that do not cause drug dependence diverted? Can treatment exist for a period that is longer than the period of imprisonment provided for in the offence for which the accused has been charged? Does the accused still have to serve a period of imprisonment if the treatment is not successful? What constitutes successful treatment and does the person in treatment have the right to a hearing before an independent authority and to be represented by legal counsel and present expert medical testimony on the evolution of his or her treatment?**

As highlighted above, although treatment centres operated by NDDCB and the military are in operation, persons are referred to these centres for treatment through the normal judicial system, and special drug courts do not exist for this purpose. Treatment at a rehabilitation centre as an alternative to imprisonment can be mandated through a Community Based Correction order, where an individual may be required to complete certain conditions as part of the non-custodial sentence, such as seeking treatment for their substance dependency, completing vocational training courses and attending counselling sessions. When an individual breaches the conditions of their CBC Order, they may be

required to pay a fine or the order may be cancelled and the individual would be sent to prison.<sup>13</sup>

**10. Does your State have specialized criminal courts for people accused of drug related offences that do not have as their focus diversion for drug treatment, but rather operate as specialized criminal courts and normally sentence those charged to prison after conviction? What differences exist between specialized criminal drug courts and regular criminal courts? What is the legislative justification for having specialized criminal courts for drug-related offences? Please describe how such specialized courts conform to the procedural guarantees for detention and fair trial under international norms.**

The author is not in possession of adequate first-hand information on this subject matter.

**11. Does your State use military courts to try people for drug-related offences? Please describe how such military courts conform to the procedural guarantees for detention and fair trial under international norms. Are military personnel involved in law enforcement operations against individuals or groups suspected of drug-related crimes? If so, are these regular military forces or the military police? Have they received training in human rights standards for law enforcement and the use of force? How is coordination undertaken with civilian law enforcement?**

News reports of members of the Navy apprehending persons involved in drug trafficking, particularly when they attempt to smuggle narcotic substances into the country by sea, are often reported in the media. Arrest by the Navy involves the risk of delay in suspects being transferred to police custody, and thus being presented before a judge within the stipulated duration of 24 hours.

The President using Section 12 of the Public Security Ordinance to call out members of the armed forces to maintain public order 'where circumstance endangering the public security in any area have arisen or are imminent and the President is of the opinion that the police are inadequate to deal with such situation in that area' has empowered members of the armed forces to engage in law enforcement activities.<sup>14</sup>

**12. Does your State have legislation that provides for administrative detention for people who use drugs who are considered a danger to themselves or others? If so, can you please describe the legislative basis for such detention, applicable procedural safeguards, including the right to be represented by legal counsel and to present expert medical testimony, and a right of appeal? Can other legislation such as that aimed at individuals with psycho-social disabilities be used in**

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<sup>13</sup> Section 14 of the Community Based Corrections Act (No. 46 of 1999)

<sup>14</sup> Public Security Ordinance (No. 25 of 1947)

**relation to those who use drugs and are considered a danger to themselves or others? If so, can you describe the legislative basis for such detention, applicable procedural safeguards, including the right to be represented by legal counsel and to present expert medical testimony, and a right of appeal?**

The author is not in possession of adequate first-hand information on this subject matter.

**13. Does your State provide for the involuntary detention of pregnant women who use drugs in circumstances where such drug use has been deemed to constitute a danger to the foetus, and where voluntary attempts by health professional to work with the pregnant woman have failed? Please describe the legislative basis and applicable procedural guarantees in case of such an involuntary detention.**

The author is not in possession of adequate first-hand information on this subject matter.

**14. Does your State provide drug treatment to people in custodial or pre-trial detention, or who have been imprisoned following a conviction? Do these drug treatment services include harm reduction services? Please describe what types of drug treatment and harm reduction services are available to detainees and imprisoned people. Please also indicate if such services are available to those in administrative detention such as undocumented migrants or those subject to a deportation order. If no such services are available, does this result in forced confessions or people not being able to participate in their defence?**

Drug rehabilitation programmes exist at certain prisons for persons held in in pre-trial detention on charges of drug offences. However, these rehabilitation programmes are largely ad-hoc, informal and involve non-medical means of treatment, such as group therapy and counselling, as well as religious and spiritual reflection. Generally, no treatment for withdrawal symptoms is provided in prisons, and often physical force is used to restrain and subdue persons suffering withdrawal symptoms who create disturbances and disorder within the prison.<sup>15</sup>

**15. Are juveniles (those under the age of 18) subject to arrest, detention and imprisonment for drug-related crimes? For crimes relating to the acquisition, use or possession for personal use of drugs? If so, are they detained or imprisoned in facilities for children in conflict with the law who are under 18, or are they detained or imprisoned in facilities for adults? Can such juveniles be subjected to compulsory drug treatment or treatment with the consent of their families/legal guardians?**

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<sup>15</sup> Personal observations of former Human Rights Commissioner, Ambika Satkunanathan, who led the first ever national study of prisons conducted by the Commission from 2018 to 2019. She is currently a Senior Advisor to Freedoms Collective.

The age of criminal responsibility in Sri Lanka is 12 years. In the national law, persons below the age of 22 and above the age of 16 fall within the definition of youth offenders, which results in minors (offenders between the ages of 16 and 17) being grouped together with adults (offenders aged between 18 and 22). Persons under the age of 18 and over the age of 16 can be arrested for drug related offences and are then held in pre-trial detention at adult prisons. Following the conclusion of their case, these individuals can be sent to juvenile detention facilities or Youth Training Schools where they are held with persons up to the age of 22.

Juveniles can also be sent to drug treatment centres with the consent of their family members.

**16. What provision is in place for those drug users and their dependants who are detained in the context of migration in your State?**

The author is not in possession of adequate first-hand information on this subject matter.

**17. Are there any good practices being developed or implemented in your State in relation to drug-related detention and drug policies? If so, please provide examples.**

The Department of Community Based Corrections<sup>16</sup> attempts to fulfil its mandate by providing and advocating for alternatives to imprisonment for drug offenders, bearing in mind the socioeconomic conditions and health implications of drug dependent persons, who would have to face the additional stigma, loss of income and estrangement from family and friends that results from custodial penalties. The Department of CBC proposes a non-custodial measure whereby offenders can be required to fulfil the conditions of their CBC order, which could include drug rehabilitation, medical treatment and participation in a vocational training programme.<sup>17</sup> This would allow offenders to improve the quality of living by learning employable skills, while receiving treatment for their substance dependency. Offenders may also be able to access individual and family counselling to deal with the psychological detrimental effects of drug dependency to ensure a holistic approach to rehabilitation, rather than a retributive one.

However, due to the lack of funding, officers and resources, the Department of CBC is not able to meet the demand for their services, and are unable to reach rural areas to provide treatment for drug offenders.<sup>18</sup> Due to the lack of officers, they are able to conduct only

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<sup>16</sup> Section 4 of the Community Based Corrections Act (No. 46 of 1999)

<sup>17</sup> Section 9 of the Community Based Corrections Act (No. 46 of 1999)

<sup>18</sup> Personal observations of former Human Rights Commissioner, Ambika Satkunanathan, who led the first ever national study of prisons conducted by the Commission from 2018 to 2019. She is currently a Senior Advisor to Freedoms Collective

limited monitoring and evaluation of the programme which limits its capacity to improve based on the feedback of drug offenders.<sup>19</sup>

### **18. Are there any new or emerging trends in drug-related detention and drug policies that could be addressed by this study?**

The steps taken by the former President of Sri Lanka to resume executions for persons sentenced to death for drug trafficking is the culmination of the campaign that portrays drug offenders as a menace to society, in order to garner support for a retributive approach towards curbing the sale and consumption of narcotic substances. This approach is similar to the war on drugs undertaken by countries such as the USA and Philippines, rather than tackling the problem of substance dependency as a public health issue which requires a medical intervention over a punitive one, or considering socioeconomic factors that drive persons to engage in the sale of narcotics. Past offenders faced considerable stigma in society following their release from prison, and are constantly looked at with suspicion by law enforcement.

The President of Sri Lanka has recently appointed a Presidential Task Force to build a 'Secure Country, Disciplined, Virtuous and Lawful Society', the members of which include retired and active members of the military. The mandate of this body includes, *inter alia*, to 'take necessary measures for prevention from drug menace, prevent entry of drugs from abroad through ports and airports and to fully eradicate drug trafficking in the country and to prevent other social illnesses caused by drug abuse'.<sup>20</sup>

### **About Freedoms Collective**

Freedoms Collective was established as a registered trust in 2020 in Sri Lanka with the primary aims of providing legal aid, conducting human rights research and advocacy, building the capacity of young legal practitioners and supporting strategic human rights litigation. Freedoms Collective was founded by Mr Pulasthi Hewamanna, an experienced human rights advocate who has litigated before the Supreme Court and Appellate Courts of Sri Lanka on a number of human rights matters. As one of its first projects, Freedoms Collective is supporting multiple applications on behalf of condemned prisoners challenging the constitutionality of the death penalty following the government's attempt to resume executions. The Supreme Court issued a temporary stay of the executions and the case is now pending a full hearing.

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<sup>19</sup> Performance Report - Department Of Community Based Corrections, January to December 2018.

<sup>20</sup> Extraordinary Gazette No. 2178/18, issued on 2 June 2020:  
[http://www.documents.gov.lk/files/egz/2020/6/2178-18\\_E.pdf](http://www.documents.gov.lk/files/egz/2020/6/2178-18_E.pdf)