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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

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Your No. }

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திகதி } 1 January, 2016
Date }

His Excellency Maithripala Sirisena
President of the Democratic Socialist Republic of Sri Lanka
Presidential Secretariat
Colombo 1

Your Excellency,

RECOMMENDATION TO ABOLISH THE DEATH PENALTY IN SRI LANKA

We extend to Your Excellency our warm wishes for the New Year.

We take this opportunity, on this auspicious day, to recommend the abolition of the death penalty in Sri Lanka in keeping with Sri Lanka's commitment to a more humane society consonant with human rights principles and values.

In terms of the Human Rights Commission of Sri Lanka Act No. 21 of 1996, the Human Rights Commission of Sri Lanka is required by Section 10 (c) and 10(d) of the said Act, among other things, to advise and assist the government in formulating legislation and administrative directives and procedures in furtherance of the promotion and protection of fundamental rights and to make recommendations to the Government regarding measures which should be taken to ensure that national laws and administrative practices are in accordance with international human rights norms and standards.

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The Human Rights Commission wishes to bring to Your Excellency's and the Government's attention its recommendations regarding the abolition of the death penalty, which the Commission views is imperative for Sri Lanka in recognition of the growing global recognition that the death penalty seriously violates several human rights including the right to life and freedom from cruel and inhuman punishment; is an extreme and irreversible punishment; and is ineffective as a deterrent to crime. Sri Lanka should demonstrate its commitment to the sanctity of life and fundamental human rights principles by joining the more than 100 nations in the world that have abolished the death penalty thus far. Another 60 countries do not carry out death sentences in practice.

International human rights obligations of Sri Lanka clearly discourage the death penalty. Article 3 of the Universal Declaration of Human Rights enshrines the sanctity of human life by affirming that everyone has the right to life, liberty and security of person, whilst Article 6 of the International Covenant on Civil and Political Rights strongly suggests that abolition of the death penalty is desirable.

Your Excellency's attention is drawn to the Second Optional Protocol to the International Covenant on Civil and Political Rights, adopted by the UN General Assembly by resolution 44/128 of 15th December 1989 which calls for the abolition of the death penalty. Its Preamble declares that the abolition of the death penalty contributes to the enhancement of human dignity and progressive development of human rights. In keeping with Sri Lanka's commitment to improving human rights protection in the country we recommend that Sri Lanka accede to the Protocol and take steps to abolish the death penalty.

Whilst appreciating that from 1976, successive governments in Sri Lanka have not implemented the death penalty, the Commission notes that courts continue to impose the death penalty under several statutes which provide for the imposition of the death penalty, including the Penal Code and the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act No. 13 of 1984. 

In view of international and comparative jurisprudence, the Commission agrees with the position that the death penalty amounts to cruel, inhuman and degrading punishment and fails to respect the sanctity of human life. The Supreme Court of Sri Lanka has held that although there is no express fundamental right to life, nevertheless that such a right is implied in the 1978 Constitution of Sri Lanka. Article 11 of the 1978 Constitution prohibits without any reservation torture as well as cruel, inhuman and degrading treatment or punishment.

The Commission seeks to place before Your Excellency and the Government the following factors which should be considered in abolishing the death penalty:

i) Death Penalty as a deterrence to crime

Many proponents of the implementation of the death penalty have urged its implementation as a deterrence to crime. However, it is our view that it is an effective justice system and a just social order that lead to a reduction in crime, as is seen in countries which have some of the lowest crime rates. There is no empirical data, to show that death penalty has caused a reduction in crime or has a deterrent effect on crime.

ii) The risk of miscarriage of justice and the irreversibility of capital punishment


Despite constitutional safeguards, including the appeals process and recommendations being called from the trial judge, the Attorney General and Minister of Justice, it is the view of the Commission that there is always the risk of innocent persons being executed for crimes which they did not commit.

It is the view of the Commission that in view of the serious flaws which exist in the criminal justice system coupled with Sri Lanka, unlike other countries, not having a process permitting the reopening of a criminal case after exhaustion of the appeals procedures, there is a serious risk of a miscarriage of justice. Although due process is

in criminal proceedings are guaranteed by the Constitution and statutory law, there is always the possibility of human error distorting the final outcome.

The Commission wishes to place before Your Excellency that there have been several instances, in countries including those of the developed world, where also due to new investigation techniques and development of technology, fresh evidence has surfaced or doubts raised about the integrity of evidence many years after conviction. In the United States , Canada and the United Kingdom there have been several occasions where people wrongly convicted have been released from death row or prison decades later, the most recent being a U.S. man who was released in November in Louisiana after serving 23 years in prison for several crimes, because the judge found he did not obtain a fair trial. The lead investigator and the judge in the original trial said they believe his conviction was a "miscarriage of justice". Similarly, the Commission notes there are allegations of prosecutorial misconduct leading to conviction of the innocent in Sri Lanka. Such an instance is highlighted in the Supreme Court Judgment of *Wijepala v Attorney General (2001) 1 SLR 42*.

iii) **Accused not being properly defended**

The Commission is also of the view that the chances are that accused from underprivileged circumstances would be more prone to be subjected to the death penalty than those who have the financial means to hire competent counsel. There is a possibility of certain accused being convicted not due to their guilt but due to being improperly defended. In the High Court where accused are financially unable to retain counsel, the State assigns counsel from the private bar at random, who often tend to be young, untrained, inexperienced and not sufficiently remunerated. 

For all of the above reasons the Human Rights Commission recommends that Sri Lanka ratifies the Second Optional Protocol to the ICCPR and abolishes the death penalty forthwith. The death penalty should be substituted with periods of imprisonment that befit the seriousness of each crime. Accordingly, we recommend that commutation of periods of imprisonment for such crimes also be done according to a national policy that takes into consideration the serious impact of such crime on society.



**Dr. N.D. Udagama,
Chairperson,
National Human Rights Commission of Sri Lanka.**

**Cc: Hon. Prime Minister
Hon. Speaker
Hon. Leader of the Opposition
Hon. Minister of Justice**