

**Mandates of the Working Group on Arbitrary Detention and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health**

Ref.: AL LKA 5/2024

(Please use this reference in your reply)

23 December 2024

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 51/8 and 51/21.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the treatment of persons allegedly involved in drug-related offences and the processes for their rehabilitation, following the adoption of the Poisons, Opium and Dangerous Drugs (Amendment) Act No. 41 of 2022, and the Bureau of Rehabilitation Act, No. 2 of 2023. We refer notably to our letter OL LKA 2/2023 of 14 February 2023, in which we had raised our concerns on the adoption of these legal instruments. Despite our request for observations, we regret that no response has been received from your Excellency's Government to our letter.

According to information received:

*Criminalization of minor drug offences:* A punitive approach to drug control continues to be followed in Sri Lanka, with individuals arrested for possession of minor quantities of drugs and often spending an extended period of time in prison, particularly in pretrial detention, for offences that carry simple fines. According to statistics issued by the Department of Prisons, in 2023, 62% of convicted persons in prisons were for drug-related offences. This approach does not differentiate between drug trafficking and possession of minor amounts by individuals with a drug dependency, effectively criminalizing drug dependence instead of directing individuals toward voluntary treatment.

*Violence in treatment centres:* Reports indicate routine use of violence by military personnel to maintain discipline and order. In July 2022, for instance, media reported that four military personnel were arrested after a detainee at the Kandakadu centre died from blunt force trauma. Moreover, on 25 April 2024, the then Minister of Public Security reportedly instructed police officers to "use their weapons without fear" to "eliminate" persons arrested for organised crimes.

*Increase in arrests:* Additionally, we have received reports that approximately 175,000 individual arrests have occurred between December 2023 and September 2024, often leading to detention for further investigations or compulsory drug treatment. We are also in receipt of reports that police officers entered private premises and conducted searches without search warrants. Far from showing signs of slowing down, on 11 March 2024, the

Inspector General of Police announced that the drug control operation named Operation “Yukthiya” would be “intensified” with the support of the military, raising serious human rights concerns.

We have consistently highlighted our concerns regarding the human rights violations arising from Operation “Yukthiya” and those inherent in Sri Lanka's criminal justice framework for drug-related offences more broadly, most recently in a press release on 22 January 2024.

With regard to drug treatment itself, because Sri Lanka applies an abstinence-based approach, medical services are not provided during the “rehabilitation” process, including to deal with withdrawal symptoms. Instead, manual labour, particularly agricultural and other strenuous physical activities, forms the core of the treatment process for persons suffering withdrawal symptoms at the Kandakadu centre, along with “psychological counselling” undertaken by unqualified military personnel.

UN experts have previously pointed out that drug treatment which is abstinence-based and does not include medical assistance or harm reduction interventions to ease withdrawal symptoms, can constitute torture or ill treatment under international human rights law ([A/HRC/22/53](#)). In addition, it disregards the scientific evidence pointing to the ineffectiveness of such punitive measures ([A/HRC/56/52](#)). Following its visit to Sri Lanka in 2017, the UN Working Group on Arbitrary Detention observed that persons who were arrested for drug possession were detained at the Kandakadu and Senapura rehabilitation centres without any medical assessment as to whether drug treatment was required. The Working Group stressed, as a result, that drug treatment should be undertaken by healthcare personnel rather than the military.

We would further like to highlight the [statement](#) issued in 2012 by twelve UN agencies including the United Nations Children’s Fund, United Nations Office on Drugs and Crime, World Food Programme, World Health Organisation and the Joint United Nations Programme on HIV/AIDS on compulsory drug treatment, which states:

‘There is no evidence that these centres represent a favourable or effective environment for the treatment of drug dependence [...] The UN entities which have signed on to this statement call on States that operate compulsory drug detention and rehabilitation centres to close them without delay and to release the individuals detained.’

We reiterate that the right to consent to treatment and the right to withdraw from it at any time form the core of a public health approach to drug treatment in accordance with international human rights standards. Importantly, in her 2024 report on drug use, harm reduction and the right to health, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health affirmed the right of everyone to be free from non-consensual medical treatment ([A/HRC/56/52](#)). The Special Rapporteur further stated that informed consent is required for drug treatment to be administered.

We further stress that compulsory detention regimes and forced labour are not a scientifically valid means to treat drug dependence, and are thus inherently arbitrary. Drug consumption or dependence is not a sufficient justification for detention. These centres are not only manifestly contrary to human rights law and standards but have proven ineffective in the treatment of drug dependence. Access to harm reduction measures forms an integral part of the right to health, and the Human Rights Council has recognized the need to ensure access to evidence-based prevention, harm reduction and drug treatment along with addressing the underlying social and economic determinants of health ([A/HRC/RES/52/24](#)). In this regard, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, stressed that, “[a]s part of their obligations to guarantee the right to health, States must ensure that harm reduction services are in line with the operationalization of the right to health approach, namely that services are available, acceptable, accessible and of quality.” ([A/HRC/56/52](#))

In this context, the continued operation of the Kandakadu and Senapura treatment centres where persons are reportedly subjected to confinement for the purpose of compulsory drug treatment may contravene the prohibition against arbitrary deprivation of liberty.

Finally, we note that the death penalty is retained in law as punishment for drug trafficking offences in Sri Lanka, and recall with alarm that in 2019, the then President attempted to resume executions for drug offences after a moratorium of over forty years. We [reiterate](#) that drug offences do not meet the required threshold for the “most serious crimes” standard under which the application of the death penalty is permissible.

We wish to refer to the 2021 study by the UN Working Group on Arbitrary Detention on arbitration detention relating to drug policies which cautioned against the use of disproportionate sentences for drug-related offences ([A/HRC/47/40](#)). More recently, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health underlined the need for States to move from a reliance on criminal law and instead take a human rights-based, evidence-based and compassionate approach to harm reduction in relation to drug use and drug use disorders. The Special Rapporteur also underlined that the criminalization, overuse of incarceration, arbitrary deprivation of life, unnecessary use of lethal force in drug enforcement and application of the death penalty as punishment in the name of public health have resulted in various human rights violations. ([A/HRC/56/52](#))

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) on the analysis above;
2. Please explain how the current legal framework and its application align with Sri Lanka’s obligations under international law, particularly the principles and standards protecting against discrimination, arbitrary

deprivation of liberty, torture and ill-treatment, forced labour, and the rights to due process, a fair trial, and adequate standards of physical and mental health, as established in international human rights treaties, including the ICCPR and the International Covenant on Economic, Social and Cultural Rights;

3. Please provide information on the rehabilitation programmes for persons involved in drug-related offences and those who are drug users, and outline the measures undertaken to ensure that such programmes are delivered on the basis of consent;
4. Please share any actions the Government of Sri Lanka has taken or intends to take in order to implement the recommendations of the UN human rights mechanisms referred to in this letter, and to bring its legislation into compliance with international human rights law.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Finally, we would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit a case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to this communication and to the regular procedure.

Please accept, Excellency, the assurances of our highest consideration.

Ganna Yudkivska

Vice-Chair on communications of the Working Group on Arbitrary Detention

Tlaleng Mofokeng

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

## Annex

### Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In this context, we would like to refer to article 9 of the Universal Declaration of Human Rights (UDHR), prohibiting arbitrary detentions, and article 9 of the International Covenant on Civil and Political Rights (ICCPR), enshrining the right to liberty and security of person. The latter establishes, in particular, that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law.

In addition, articles 2 (2) and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) established everyone's right to the highest attainable standard of physical and mental health, with no discrimination. The right to health is also provided for in several other international human rights instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination (art. 5 (e) (iv)) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (arts. 28 and 43).

Article 12 (2) (c) and (d) of the ICESCR covers the prevention, treatment and control of diseases, which include drug use disorder, and the creation of conditions that ensure medical care when needed. Article 15 (1) (b) of the ICESCR states that everyone has the right to enjoy the benefits of scientific progress and its applications. That right has been recognized as being instrumental to the realization of the right to health and applies in the context of drug use disorder and in the development of laws and policies aimed at addressing drug use more generally.

The international law on deprivation of liberty prohibits States from detaining any individual without a valid order to that effect. Article 9 of the ICCPR prohibits the detention of individuals without a legal basis. Similarly, rule 7 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the "Mandela Rules") establishes that no individual should be detained in a prison without a valid commitment order. Principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the "Body of Principles") echoes this prohibition by requiring that any form of detention be ordered by or subject to the control of a judicial or other authority.

Furthermore, we would like to stress that the law on detention varies according to the type of detention. Specifically, article 10 of the ICCPR requires the segregation and separate treatment of individuals not yet convicted from those already convicted. Rules 11 and 112 of the Mandela Rules further provide that untried individuals shall be kept separate from tried individuals. Rule 113 of the Mandela Rules requires that untried prisoners sleep alone in separate rooms. Principle 8 of the Body of Principles also stresses the need for individuals not yet convicted to be kept separate from those convicted. Rule 56 of the United Nations Rules for the Treatment of Women Prisoners

and Non-custodial Measures for Women Offenders (“Bangkok Rules”) emphasizes the particular risk of abuse that women face in pretrial detention and provides that the authorities shall adopt appropriate measures to guarantee women’s safety.

Regarding detainees’ medical health, rule 24 of the Mandela Rules safeguards detainees’ right to access necessary health-care services, without charge. Rule 118 further makes clear that untried detainees must be allowed to be visited and treated by their own doctor if there are reasonable grounds for such a request and if they are able to pay the expenses incurred. The same guarantees are established on the test of the Bangkok Rules.

Article 9 of the ICCPR and principle 35 of the Body of Principles respectively establish a right to compensation for any individual who has been unlawfully arrested or detained, and who has suffered damages as a result of the authorities’ breach of any of the principles contained in the Body of Principles.

The right to life, as recognised under customary international law and articulated by article 3 of the Universal Declaration of Human Rights, states that everyone has the right to life, liberty, and security of person. The right to life is further enshrined at article 6 of the ICCPR, to which Sri Lanka is party, and must be guaranteed for all human beings, without distinction of any kind, including for persons suspected or convicted of even the most serious crimes.<sup>1</sup> The right to security of person under article 9 of the Covenant, for its part, protects individuals against intentional infliction of bodily injury, regardless of whether they are detained or non-detained.<sup>2</sup> Moreover, the right to take proceedings before a court for release from unlawful or arbitrary detention under article 9 (4) of the ICCPR has been interpreted by the Human Rights Committee as also applying to detention for drug addiction.<sup>3</sup> The prohibition of torture, a non-derogable norm under international law, strictly forbids violence against detainees, including those in treatment centres.<sup>4</sup>

Finally, in its 2021 report to United Nations Human Rights Council, the Working Group on Arbitrary Detention notably recommended that States:<sup>5</sup>

- (a) Decriminalize the use, possession, acquisition or cultivation of drugs for personal use, including the possession of associated paraphernalia. Positive, evidence-based messaging through the media and other publicly accessible resources may assist in reducing stigmatization and promote better understanding of the health and other benefits of decriminalization;
- (b) Promptly release persons detained only for drug use or possession for personal use and review their convictions with a view to expunging their records;

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<sup>1</sup> Human Rights Committee, General Comment 36, [CCPR/C/GC/36](#), para. 3.

<sup>2</sup> Human Rights Committee, General Comment 35, [CCPR/C/GC/35](#), para. 9.

<sup>3</sup> *Ibid.*, para. 40.

<sup>4</sup> Committee against Torture, General Comment 2, [CAT/C/GC/2](#).

<sup>5</sup> [A/HRC/47/40](#), para. 126.

- (c) Prioritize the placement of persons accused or convicted of minor, non-violent drug-related offences in diversion or non-custodial alternatives to prison – prison should not be the norm, but used as a last resort only;
- (d) Undertake a comprehensive review of procedures pertaining to detention, arrest, search, testing, pretrial detention, trial and sentencing to address situations in which human rights violations, including arbitrary detention, frequently occur. How the justice process deals with specific groups that may be the object of discrimination or disproportionate drug control enforcement efforts should be addressed. Targeting of such groups and actions that may constitute an obstacle to such persons receiving health treatment for drug disorders should cease;
- (e) Close without delay State-run compulsory drug detention centres and private treatment facilities that hold persons against their will. Moratoriums on further admissions to such State-run compulsory drug detention centres and private treatment centres should be adopted;
- (f) Immediately release persons confined against their will in drug treatment facilities, be they public or private, and encourage drug dependent persons to voluntarily seek evidence-based treatment in a community setting, with their informed consent;
- (g) Amend legislation, policy and practice so that all treatment for drug use disorders, including for drug dependency, is evidenced-based, strictly voluntary and based on informed consent. All persons have the right to refuse treatment, agree a programme of treatment in a consultative process, stop treatment at any time and immediately leave any drug treatment facility;
- (h) Ensure that health professionals have exclusive competence in matters of drug treatment, and that neither drug courts nor regular courts use the threat of imprisonment as a means to coercively influence an accused or convicted person into drug treatment. The use of drug courts should be discontinued. Forced drug treatment should never be ordered by the courts;
- (i) Ensure that military authorities are not, in principle, involved in drug enforcement activities and have no role in the management of drug treatment facilities;
- (j) Evaluate the health condition of all persons detained in any place of detention, paying attention to whether they have a drug use disorder, including whether they are drug dependent, and formulate a plan for treatment by health professionals in consultation with the person and with their voluntary and informed consent. Harm reduction services should also be made available;
- (k) Ensure the availability in prisons and other places of detention of opioid antagonists, such as naloxone, that counter the effects of drug overdose,

and provide them to prisoners during their detention and on their release;

- (l) Amend legislation and sentencing guidelines to provide for sentencing for drug-related offences that is proportionate. Courts should consider whether the person charged with a drug-related offence had a lesser or minor role and whether he or she is a victim of human trafficking, was subject to coercion or whether any other mitigating factors are present; and
- (m) Ensure that human rights defenders, activists working in the drug policy field, harm reduction service providers and journalists can work and meet freely among themselves, with health professionals and with foreign experts and representatives of international organizations without threat of criminalization of their activities, financial penalties or other forms of harassment.