



Prison Study by the Human Rights Commission of Sri Lanka



Prison Report: Table of Contents

Introduction

1. Executive Summary
2. Introduction
3. Methodology
4. An Analysis of the UN Standard Minimum Rules for the Treatment of Prisoners
5. Introduction to the Prison System

Part I – Treatment and Conditions

6. Entrance and Exit Procedure
7. Accommodation
8. Food
9. Water, Sanitation and Personal Hygiene
10. Access to Medical Treatment
11. Contact with the Outside World
12. Grievance Mechanisms
13. Inmate-Officer Relationship
14. Discipline and Punishment
15. Death in Prison

Part II – The Rehabilitation Process

16. Rehabilitation of Prisoners
17. Prison Work
18. Early Release of Measures

Part III – Special Categories of Prisoners

19. Prisoners on Death Row
20. Prisoners held under the Prevention of Terrorism Act
21. Young Offenders
22. Foreign Nationals
23. Women
24. Prisoners with Disabilities

Part IV – Prison Management

25. Challenges Faced by the Prison Administration

Part V – The Criminal Justice Process

26. Arrest and Detention
27. Access to Legal Representation
28. Legal and Judicial Proceedings

Part VI – The Continuum of Violence

29. The Continuum of Violence

Part VII – Alternatives to Incarceration

30. Non-custodial Measures

Part VIII - Follow Up and Conclusion

31. Postscript: Follow-Up

32. Conclusion

33. Acknowledgments

34. Annex

35. Abbreviations

Executive Summary

Overview

The Human Rights Commission of Sri Lanka initiated the Study of Prisons in Sri Lanka in response to the absence of information in the public domain about, as well as lack of public discourse on the prisons system, and conditions and treatment of prisoners.

The study was conducted in twenty prisons around the country. The methodology of the study consisted of inspections of prisons, administering questionnaires and conducting interviews with prisoners. Interviews were also conducted with prison officers from each prison as well as external stakeholders involved in the criminal justice and correctional process, including state actors from all relevant ministries. Based on the information gathered, the conditions of prisons and treatment of prisoners were evaluated within the fundamental human rights standards outlined in the Constitution of Sri Lanka and the domestic legal framework regulating the administration of prisons, as well as relevant international human rights obligations of the state.

The study revealed that the treatment and detention conditions of prisoners fall far below the threshold of basic living standards. The provision of services to which prisoners are entitled, including access to healthcare and opportunities for rehabilitation, are poor because the level of occupancy of the prisons is manifold its capacity. Due to the severe shortage of staff prison officers are overworked and experience job dissatisfaction and mental distress. The inadequate remuneration that is not commensurate with the difficult and even dangerous conditions of their work environment exacerbates the challenges they face discharging their functions effectively. Thus, prisons were found to be overcrowded and dysfunctional, where the risk of breeding criminality, corruption and recidivism was high as the opportunities for rehabilitation were minimal. Hence, there is the absence of conditions conducive to the effective social re-integration of reformed prisoners.

In this context, the Commission observed that certain categories of prisoners are more vulnerable than others, such as prisoners on death row, women, young offenders, foreign nationals, prisoners detained under the Prevention of Terrorism Act and prisoners with disabilities. The specific challenges that they face must be considered in policymaking in order to ensure they have equal and equitable access to a chance for reform.

Qualitative information gathered during interviews with prisoners overwhelmingly suggested that the majority of prisoners are from a lower socio-economic background, as illustrated by details they revealed of their personal circumstances, including their inability to retain the services of a legal representative due to the lack of financial resources. Prisoners often cited their lack of financial stability and poverty as reasons they initially became involved in criminal activities. Poverty was a factor that intersected across all age, ethnic and religious groups of prisoners. Male prisoners, in particular, stated that, as they were the primary income earners in their family, they were unable to provide for their families during

incarceration, resulting in their families experiencing multiple hardships, about which many prisoners expressed anguish. Often, the prisoner lamented that while he/she was being offered three meals in prison, there was no one to provide even one meal to their family.

The Commission also found that numerous shortcomings in the functioning of the criminal justice process contributed to extended incarceration of persons, particularly pre-trial detention, which in turn, contributed to the creation of adverse living conditions and treatment in prison. The manner in which bail is awarded, the administrative inefficiencies of state institutions, such as the Attorney General's Department, the lack of legal aid and the poor utilization of alternatives to incarceration all contribute to more prisoners spending longer periods of time in prison. Not only is this a huge burden on the taxpayer, but it also results in diminishing returns because prisoners do not leave prison being prepared to reintegrate into society and live as productive citizens. Instead, the system, as it currently exists, could potentially result in released prisoners resorting to further criminality after release in order to survive.

The correctional system therefore requires extensive reform if it is to fulfil its objective of rehabilitating prisoners and ultimately preventing crime. It is hoped that this study will be the foundation for formulating correctional policies that seek to provide effective rehabilitation programmes that enable persons to live with dignity during and after their term of imprisonment, rather than exacerbating the socio-economic and psychological conditions that lead to criminality in the first place.

It must be highlighted that throughout this study, the Commission observed DOP officers to be extremely aware of and empathetic towards the hardships faced by inmates within prison, even in their personal lives. Prison staff were found willing to discuss the shortcomings and weaknesses of the Department of Prisons, and officers themselves provided insightful and progressive suggestions to improve the existing penal system and transform it into a correctional system. Their recommendations were wide ranging, encompassing the living conditions of prisoners, rehabilitation programmes to reduce the rate of recidivism and even means of strengthening the criminal justice process. For this reason, the Commission believes that prison officers at all ranks should be consulted in any prison reform initiatives undertaken by the government.

Part I – Treatment and Conditions of Prisoners

1. Entrance and Exit Procedure

The process of admitting and registering a new inmate to prison was observed to be uniform and consistent across all prisons but contained a number of shortcomings. For instance, the information management system in prisons is highly inefficient as manual files, rather than a digital centralized database, are used to store prisoners' records, leading to delays in the search and retrieval of files. Although a few prisons were observed to be operating an electronic system of data management, the lack of IT proficient officers amongst the staff limited the long-term success of these initiatives.

As part of the entrance procedure, prisoners are queried whether they were assaulted by the police during arrest, and if they wish to take legal action. If the prisoner so desires, details of the assault and the alleged perpetrators would be forwarded to the Superintendent of the relevant police station. However, such processes do not necessarily result in the perpetrators being held accountable, since it cannot be confirmed whether any resultant action will be taken nor is the prisoner provided with the means to follow up on their complaint.

Prisoners are photographed as part of the registration, often with their shirt removed, and any visible marks of injury are marked, which places a timestamp on the injuries. However, in many prisons, registration may only be conducted on the day after the admission, especially if the prisoner was admitted in the evening. Thus, there may be no timestamp of a prisoner's injuries prior to their admission to prison, which would make it difficult to distinguish injuries acquired after their entrance to the prison.

Prisoners are required to undergo a comprehensive medical screening to detect any illnesses, but it was found that this is not often conducted due to the lack of medical equipment and technological resources to conduct screening tests. Prisoners, at most, would simply undergo a basic medical examination by a doctor the following admission to prison. A comprehensive examination is necessary to detect any serious illnesses and particularly to identify any drug dependency, withdrawal symptoms or suicidal tendencies amongst new entrants.

The Commission was informed that the body search of any inmate entering the prison is mandatory to prevent contraband from being smuggled inside. However, several complaints were received by the Commission alleging searches are carried out in a derogatory manner without respect for the privacy and dignity of an individual. This highlighted the urgent need for new technology to be used to undertake body searches efficiently, without causing indignities or distress to an inmate. In this regard, although the Commission observed body scanners in some prisons, it was found that most were in need of repair and were also not sophisticated enough to detect different kinds of contraband. Further, electronic systems currently in place at some prisons are not operational, either due to a lack of trained staff to operate them or insufficient/irregular maintenance.

A standard orientation programme on the rules and regulations of daily life in prison, the list of prison offences and resultant sanctions, internal grievance mechanism, etc., is required to be conducted for new entrants, but the Commission found it was not done in all prisons. Certain prisons offer varying amounts of information to new prisoners, via an oral presentation, but this is available only in Sinhala.

The Commission received information from prisoners in a number of prisons that prisoners are subjected to physical assault upon entry, usually referred to as the 'welcome slap' depending on the offence for which they have been imprisoned. Drug and sex offenders and reconvicted prisoners in particular reported being subjected to such torture.

2. Accommodation

Prisoners in Sri Lankan prisons are separated according to outdated national legislation, which is at variance with relevant international standards. While the segregation of males and females is strictly maintained, prisoners under eighteen years of age are held with prisoners up to the age of twenty-two, which is permitted by national legislation, which also recommends the segregation of persons from a socially influential background from other prisoners.

Convicted prisoners are transferred to a prison based on whether they are first offenders or recidivists, although they often request to be held in prisons close to their hometown in order to be closer to their families.

Ward conditions do not comply with accepted standards of space per prisoner, ventilation, lighting and temperature, and often amounted to inhuman living conditions. The primary cause of this was not only the overcrowding of virtually every institution, but also the dilapidated state of prisons as most of them were built decades ago. The crumbling roofs and walls in prison buildings constitute a threat to the lives of inmates and in the event of a natural disaster or calamity, the prison would not be able to respond in a swift and safe manner. Disaster management policies and evacuation protocols were absent in all prisons visited by the Commission. Elderly and prisoners with disabilities would hence potentially suffer the most harm in such an event. Such systemic issues were not only found in older prisons but also in recently built prisons, which fail to comply with international standards.

The overcrowding of wards results in many new remandees standing all night-long as they do not have space to sleep, or being forced to sleep near or inside the toilet. Prisoners frequently complained of, which the Commission observed as well, a large number of mosquitoes and bedbugs as well as rats and pigeons inside the wards, which contributed to their distress and adversely affected their health as well. Conditions of the wards and other facilities are not regularly monitored by medical officers or public health inspectors, despite legal requirements. The lack of external and independent monitoring of prisons and the resultant action taken by the Ministry indicates a serious disregard for prisoners' health and living conditions. Such conditions are conducive to the spread of illnesses among prisoners, which, in turn, impact the overburdened prison healthcare and transport system.

3. Food

Prisoners from every prison except Anuradhapura Remand Prison complained about the quality of the food served to them, stating it was tasteless and watery and that often the rice was uncooked. The Commission observed that the reasons for the unsatisfactory quality of prisoners' meals could be attributed to the unhygienic conditions of prison kitchens, where prepared food was often left open and exposed to spoilage, particularly due to the clogged drains and damp floors in kitchens that are ideal breeding ground for bacteria. Prisoners who engaged in hard labour at work camps and open prisons often complained that the quantity of food they received was inadequate.

The Commission observed a large amount of food is wasted every day, especially at remand prisons, likely due to the unsatisfactory quality of the food, and also because remand prisoners are allowed to receive food from home, and a proportional reduction is not efficiently made to reduce the amount of food prepared. The inefficiency in the preparation of food therefore contributes to the waste of food supplies and resources.

The Commission was informed that prisoners who cook the food usually do not possess prior culinary experience, which would inevitably impact the quality of food. Medical officers do not inspect the conditions of the kitchen as required by national legislation, and hence, a quality check of the preparation of meals is not undertaken. The lack of oversight reportedly allows room for the alleged appropriation by officers of ingredients, spices and condiments meant for prisoners, which contributes to the low quality of food.

It should be noted that prisoners in many prisons reported that the quality of the food improved during the three to four-day period of the Commission's visit.

4. Water, Sanitation and Personal Hygiene

Due to the overcrowding of prisons, obsolete prison structures which were not designed for the current level of occupancy impede the access of inmates to a consistent supply of water and sanitation facilities. The ratio of prisoners to toilets and water points is extremely high, and complaints were received from virtually every prison about the insufficient quantity of water provided to them. Toilets in the prison system also do not have flushes installed and prisoners complained they are required to use their limited water supply to sluice away excrement after using the toilets.

In prisons situated away from towns in rural areas, there would be no direct water line from the main supply line and water would have to be acquired from natural sources. Numerous complaints were received about the quality of water from certain prisons, particularly where it was derived from natural sources of water, and would become muddy or contaminated, or taste briny or brackish.

Toilets found inside wards were not furnished with doors or cubicles and due privacy is not afforded to inmates while they use them. A common characteristic of the prison system is that, since individual cells are locked at night and there are no toilet facilities in each cell, but rather toilets for common use in the ward outside the cells, prisoners are required to relieve themselves in plastic buckets and polythene bags at night time when they cannot access toilets. These bags and buckets are then kept inside their cells for the duration of the night. Multiple inmates occupying a single cell would be required to share one bucket, and often the newest entrant in the cell would be tasked with cleaning it the next morning.

As there is no budgetary allocation for the provision of toiletries , inmates are required to source necessary provisions through visiting family members, but persons who do not receive visits and foreign nationals would find it difficult to acquire these items. In such

situations, in return for provisions, they would complete personal chores of inmates who have adequate supply. Inmates are also not provided with cleaning agents by the prison due to the lack of a budgetary allocation, which contributes to unsanitary condition of the sanitation facilities.

5. Access to Medical Treatment

Despite the international requirement for prisoners' access to medical treatment to be the same as the standard of healthcare available for persons outside the prison, and national legal framework which requires that prisoners' access to medical attention is efficiently facilitated, the Commission found that prisoners' access to healthcare fell far below the requisite threshold. Prison healthcare is integrated within the national health care system whereby medical officers are recruited by the Ministry of Health, which is also responsible for procuring the supply of drugs and medical equipment. Nurses and dispensers for prison hospitals are recruited by the Department of Prisoners, which also manages the prison hospitals. The overlap between the duties and responsibilities of both the Ministry of Health and the Department of Prisons and the lack of coordination between the two are key reasons for the inefficient administration of, and unsatisfactory quality of healthcare provided to prisoners.

There is a severe shortage of medical infrastructure and supply of specialized medicine inside prison hospitals, thereby limiting the options for treatment available inside the prisons and requiring prisoners to be transferred to the general hospital for diagnosis and treatment. Prison hospitals are also short-staffed and there is a deficit of female nurses in the prison healthcare system. Doctors would be available to see patients in the prison hospital at certain times of the day, and would remain on call but not onsite at night time. As a result, the provision of medical treatment at night time was virtually non-existent and inmates reported they have to suffer symptoms throughout the night until the next day when they are taken to visit the doctor. It has also been alleged that delayed medical treatment at night time has caused multiple prisoners to succumb to their illnesses.

There is a gross shortage of transportation facilities and officers for the timely transfer of inmates to national hospitals for medical treatment regarding which the Commission received a large number of complaints, in every prison, from prisoners whose medical appointments and operations had been delayed for months, if not years. Superintendents attributed such delays to the lack of vehicles as well as the lack of staff required to escort prisoners to external hospitals. Escorts to the hospitals have to be carried out alongside performing court duty and other transfers. This is especially cumbersome since more officers and even policemen or the Special Task Force are required to transfer condemned or special¹ prisoners to the general hospital. Medical transfers are hence not always prioritized by the Superintendent and the medical officers' referral is often overridden in favour of logistical efficiency rather than symptom severity.

¹ High risk prisoners or prisoners requiring higher security

The Commission received complaints about discriminatory and differential treatment by doctors who reportedly inquire from prisoners about the details of their offence. In the case of certain offenders, such as drug offenders, medical officers reportedly taunt them about the crimes for which they have been convicted or remanded, and even state that the said prisoners should be able to bear the illness given the gravity of the crime they have committed, and therefore do not require treatment. This has an adverse impact on an inmate's psychological well-being and discourages them from requesting medical attention. Prisoners from influential socio-economic backgrounds reportedly receive better treatment from medical officers, and many such prisoners were discovered to be permanent residents of the prison hospital.

A medical officer may provide medical attention to a prisoner displaying visible signs of injury, but is not required to request the prisoner to be produced before a Judicial Medical Officer. This is contrary to international guidelines, which require medical officers to report signs of assault to relevant authorities. In an institution where there is inadequate scrutiny by external entities, medical officers play an important role as objective third parties and can intervene to ensure that a prison who alleges assault has access to the required treatment and legal remedies.

Prison conditions have the effect of triggering psychological predispositions and, coupled with the lack of meaningful activities and separation from family members, can cause psychological symptoms to foster. Furthermore, since the prison healthcare system is not equipped to provide mental health care, prisoners suffering mental illnesses are at the risk of their mental health condition deteriorating during imprisonment. Certain prisons conduct regular psychiatric clinics and are periodically visited by psychiatric consultants, but very few prisons have trained in-house counselling officers. Where a mentally ill inmate becomes particularly violent, officers resort to isolating or restraining the prisoner, while persons suffering drug withdrawal symptoms are reportedly assaulted as means of controlling them. Many prisons house persons with psychiatric illness in one ward, which is termed the 'Mental Ward', and occupants of this room are often stigmatized. Transfer of mentally ill prisoners to the National Institute of Mental Health in Angoda for treatment is subject to the availability of resources for transport.

6. Contact with the Outside World

The current system which facilitates prisoners' access to contact with their families does not serve its purpose. The infrastructure of visit rooms in remand prisons does not accommodate familial bonding, and instead becomes a source of anguish for prisoners. The reason for this is that visit rooms contain opaque mesh barriers which make it difficult to hear and see visitors, and packed visit rooms have lower ventilation, inadequate lighting and high temperatures. Visits last only for a few minutes as remand prisons have to accommodate a large number of visits in a single day, and a large number of visits are conducted simultaneously, due to which prisoners and visitors have shout over each other to be heard. Prisoners stated that prison officers treat visitors in a condescending and

discourteous manner and disparaging remarks or sexual innuendos are often made to female visitors.

Food received by remandees from their families is inspected by prison officers, but the haphazard and unhygienic inspection of items received causes disintegration and spoilage of the food, which becomes a source of frustration for inmates. Prison administrations state they resort to manual and haphazard search measures to detect the presence of contraband inside food parcels, as they do not have adequate officers or technological solutions to more efficiently counter the problem of contraband.

Most prisons do not enable efficient postal communication, thereby severely limiting family communication for prisoners whose family members cannot visit them. As letters are required to be censored and scrutinized by the prison, in instances where officers are not proficient in languages other than Sinhala, the letters may not be sent by the prison. Phone booths are found only in the Welikada prison and the cost of each call has to be borne by the families of prisoners. The phonebooths however do not have facilities to make IDD calls, which is disadvantageous for foreign nationals.

Although lawyers are allowed to meet with their clients in a separate room at most prisons, many prisoners cannot afford to remunerate their lawyers to visit them in prison as lawyers charge additional fees for such visits. This results in many defendants only meeting their lawyers in court, which adversely impacts the due process rights of a defendant to prepare a vigorous defence as they are virtually cut off from their lawyer due to the lack of adequate communication facilities provided in prison.

7. Grievance Mechanisms

It was observed that prisoners are readily able to report their grievances to the Commission when the Commission visits prisons. However, they are reluctant to use the internal grievance mechanism of the prison due to the delays associated with the procedure and the experience of other inmates who did not receive a remedy after lodging complaints. Many inmates are of the opinion that making a complaint against an officer will not result in a fruitful outcome as Superintendents are biased in favour of the officers and no action will be taken, or that the officers may not convey their requests to the Superintendent in the first place. Some feared it might lead to reprisals from officers and the Commission has been notified of prisoners who were allegedly harassed and threatened for complaining to the Commission. There is a privacy concern inherent in the grievance mechanism when prisoners speak to the Superintendent during his rounds or when a subordinate officer is present in the Superintendent's office when an inmate is making a complaint. Badulla Remand prison was found to provide every ward with a complaints book through which requests and complaints could be submitted anonymously and Jaffna Remand Prison had a complaints box for prisoners' complaints.

The Commission was informed that some judges undertake monthly visits to prisons and may even conduct rounds and inspections, which allows prisoners to report grievances to

them. However, while remandees have access to a judge since they attend court, since judges do not generally undertake regular visits to prisons, convicted prisoners who no longer go to court would be able to access the judge only if they undertake prison visits.

Although prisoners would wish to complain to the Commission about a range of grievances, they may not always have the means to do so confidentially since officers would vet letters sent to the Commission by prisoners. Further, except for prisoners at Welikada Prison, prisoners do not have the means to call the Commission's hotline and since phone conversations at Welikada Prison are also monitored, complaints cannot be lodged confidentially.

8. Inmate-officer Relationships

The Commission observed that an officer's treatment of an inmate is often determined by the prisoner's social standing, race, religion and the offence for which they have been convicted or been accused of committing. Most prison officers do not treat inmates with the respect and dignity to which they are entitled as human beings, and complaints against verbal abuse by officers were ubiquitous. Superintendents of certain prisons admitted that officers do use abusive language towards inmates, which is an issue that needs to be addressed. Many Superintendents stated they have reportedly issued explicit instructions to prison officers to desist from using abusive language in their interactions with prisoners.

The power dynamic between officers and inmates was manifest in their interactions, and prisoners were sometimes observed giving foot massages to, and polishing shoes of the officers. While remandees face the brunt of the ill-treatment, condemned and long-term convicted prisoners are treated better by prison officers since they have become more acquainted with them over time. Prison officers may even be apprehensive of upsetting the prisoners on death row who, due to their unbounded sentence and difficult conditions of imprisonment, have 'nothing to lose' and therefore cannot be effectively deterred from disrupting order in prison with the threat of further sanctions.

Prisoners of a higher social standing, however, are treated with respect and are even able to access special facilities and privileges not available to other inmates. The ability of such prisoners to access privileges points to the existence of a certain degree of corruption in the prison system, with officers reportedly accepting bribes from prisoners in return for various benefits and favours.

Prisoners also informed the Commission that discrimination based on race and religion is present among inmates, and Tamil prisoners and foreign nationals complained most about inter-inmate prejudice.

Ward leaders for each ward are conferred a considerable amount of power by prison officers to monitor and discipline their ward mates, and hence also enjoy a better relationship with prison officers, especially because they often provide information about the activities of

fellow prisoners to the officers. This has the effect of creating an unequal power dynamic among inmates, which can be exploited by inmates who wield more influence.

9. Discipline and Punishment

The Commission observed that physical violence is often used as a form of punishment for committing offences inside prison and is also an integral component of maintaining discipline and order. Prison officers were noted engaging in beatings for a range of reasons but are primarily seen to be inflicting violence on persons from impoverished backgrounds.

Prisoners reported being beaten by various instruments, such as clubs and wires in the presence of other inmates, often while kneeling or being hung up by their wrists. Prisoners could be beaten by all ranks of officers, with even Superintendents and Chief Jailors being implicated in perpetrating violence. In many prisons it was alleged that officers inflicted violence while intoxicated. Violence is seen as the primary means of maintaining order inside the prison, which may be why prisoners reported being beaten for even inconsequential reasons, in order to affirm the unequal inmate-officer power dynamic and remind prisoners of officers' superiority and the coercive and retributive power they possess.

Prison officers do not receive training on non-violent means of restraining prisoners and maintaining order. The Commission was also informed that the conditions of their work environment and associated stress and burnout causes prison officers to resort to violence in dealing with inmates. As mentioned above in the section on Inmate-Officer Relationships, persons from higher socio-economic backgrounds did not report being subject to violence or ill-treatment by officers.

A key contributory factor to the use of violence by prison officers is the fact they are rarely sanctioned for inflicting violence on inmates, which creates a culture of impunity. Since, during the prison study the presence of the Commission at prisons across the country increased, it was reported that the frequent presence of the Commission has had the effect of curbing violence in certain prisons, as offices reportedly feared the Commission would initiate inquiries into allegations of violence. This indicates that disciplinary sanctions against officers as part of a zero-tolerance policy against violence, and/or prosecutions under the Torture Act would have a deterrent effect on the use of violence by prison officers.

Another commonly cited punishment is the use of solitary confinement. The Commission found punishment cells to be dark, damp and less-ventilated, often without toilet facilities, thus exacerbating the conditions of punishment. This is contrary to international standards on the use of confinement as a means of punishment, which prohibit inhuman living conditions.

A Prison Tribunal may be convened to decide the culpability of an inmate accused of committing a prison offence and decide the sentence. A district judge is typically called upon to adjudicate and the maximum punishment that can be awarded is five years imprisonment.

It should be noted that the period of punishment awarded by the Tribunal would constitute an extension of the period of imprisonment.

Prisoners stated that when proceedings are conducted at the prison itself, rather than in a courtroom, they are concerned about the impartiality of the proceedings. The setting is rife with power disparity because the prisoner is at a disadvantage as they are without anyone to speak on their behalf. It is general practice to allow a prisoner to hire legal representation, but calling lawyers to the prison is an additional financial burden, and hence the individual would ordinarily have to represent himself before a judge. Prisoners alluded that judges simply listen to the statement of the Superintendent without conducting their own inquiries, thereby creating an appearance of bias.

While possessing contraband is one of the main reasons for receiving a beating, prisoners from every prison alleged the involvement of officers in smuggling contraband into the prison, which was also acknowledged by senior members of the Ministry of Justice and the Department of Prisons. It was highlighted to the Commission that the prevention of contraband entering prison is currently one of the key challenges faced by the Department of Prisons. Further, despite initiating disciplinary action against officers and introducing new policies, such as body and parcel scanners, to restrict the supply of contraband in prison, measures taken by the Department of Prisons reportedly fall short of addressing it effectively. This points to the need to take into account the root causes of and the systemic factors that fuel corruption, in order to prevent the smuggling in of contraband. Within such a complex environment in which illegal activities can take place, coupled with the inmate-officer unequal power dynamic, it is highly possible for prisoners to be sanctioned for possessing contraband, which was smuggled into prison by prison officers, while the officers responsible are not penalized. Such a phenomenon does not effectively prevent the spread of contraband in prison.

10. Death in Prison

While inquiring into the deaths that occurred in prison during the study, the Commission was able to uncover a number of patterns which contribute to the cause of death of inmates in custody. Violence inflicted by prisoners and prison officers which ultimately caused death was noted. In all such cases reported to the Commission, the deceased were in a state of distress, often appearing to suffer from drug withdrawal symptoms or the effect of a psychological disorder. Due to this they caused disruption and violence was used as a means of subduing them.

The Commission found that recording identifying marks and photographing an inmate upon entry is crucial as it could place a timestamp on any injuries acquired by prisoners prior to imprisonment, and hence allows a determination of whether an assault was committed on a prisoner inside the prison or prior to entry. However, new prisoners who arrive in the evening may only be examined the following day. Therefore, if a new prisoner is assaulted on their first night prior to registration, it may not be possible to ascertain whether the injuries were inflicted in prison or during arrest. The prison administration also responds to

prisoners engaging in self-harm and displaying suicidal tendencies by placing them in solitary confinement. The aggravation of the symptoms displayed by persons suffering mental illnesses coupled with the lack of medical treatment would create room for suicidal tendencies to foster and inmates to succumb to them.

Delayed access to medical treatment, and especially emergency medical treatment at night-time has reportedly led to the death of inmates. As discussed in the section on medical treatment, the lack of access to timely medical attention at night is an inherent flaw of prison healthcare, and the Commission has observed patterns where inmates have succumbed to injuries as a result. Most events which caused the death of inmates reportedly took place at night time, and the lack of prompt action taken by officers, coupled with a shortage of officers engaged in supervision and patrol duties, was seen as contributory factors to such deaths in prison.

The Commission was informed that although judicial inquiry will be undertaken in all deaths that occur in custody, the prison administration would only compile a preliminary file, which outlines the circumstances surrounding the death to be reported to the Head Office. The file on the deceased would not contain a conclusion on the cause of death, nor an analysis of the circumstances of the death. This creates room for the causal factors, such as the lack of access to medical treatment, to not be identified. The lack of a complete internal process in the event of a death in prison, is reflected in the examination of death records maintained by prisons where some 'Cause of Death' forms did not contain adequate data on the circumstances surrounding the death. As details are not recorded accurately, the prison would limit its ability to self-correct as it would not be able to improve its internal systems and procedures by learning from such events.

These shortcomings coupled with the severe shortage of resources and staff cause prisons to become a highly perilous environment for vulnerable prisoners. Most strikingly, the Commission observed the lackadaisical attitude with which the death of prisoners is regarded, which appears to indicate that the value of life diminishes behind bars.

Non-judicial investigations into deaths in prison are primarily conducted by the Commission.

Part II: The Rehabilitation Process

11. Rehabilitation in Prison

Not individualization of rehabilitation is one of the main shortcomings of the penal system in Sri Lanka. In the Sri Lankan penal system prisoners are not assessed to ascertain their personal skill set, preferences or former professions and thereafter assigned to a suitable rehabilitation program. If rehabilitation programmes in prison were individualized, then the chance of more prisoners being rehabilitated and re-integrating into society successfully upon release would increase. However, in the current system, of hundreds of prisoners, only a few inmates would be able to successfully learn a skill that they could pursue upon release to earn a living wage. The Commission found that only a few ad-hoc programmes are

provided by certain prisons. For instance, literacy classes were available for prisoners to learn basic literacy skills and language, but only a few who took initiative and effort and requested the authorities to make the necessary arrangements had the opportunities to complete disrupted secondary education according to the national curriculum or higher studies.

Religious and spiritual education is viewed as the primary tool of rehabilitation and is the main programme which prisons attempted to organise, although this was primarily facilitated for followers of Buddhism. Other methods, such as group counselling and drug rehabilitation, are not conducted uniformly across all prisons, but are conducted on a small scale in institutions where the administration collaborated with external entities. Vocational training programmes offered in prison include masonry, brick-making, cultivation and welding. These programmes point to the need to diversify skills so that prisoners are not limited to seeking low-paying occupations upon release and thus have a limited potential to restart their life and become economically self-sufficient. Aside from that, existing rehabilitation programmes are also underfunded and therefore inmates were observed working with old fashioned tools, broken equipment and without skilled instructors to guide them. These factors also discouraged prisoners from fully engaging in and committing to the programmes. This limits the potential positive impact of prison rehabilitation programmes on prisoners, and their ability to curb released prisoners from resorting to further crime.

Of all those who are part of the criminal justice system, the Commission found that Rehabilitation Officers and prison officers strongly believed in the capacity of prisoners to reform and understood the potential benefits of effective rehabilitation programmes in prison. However, their vision is hindered by systemic barriers. The lack of funding and resources, particularly the lack of Rehabilitation and Counselling officers, is seen as the primary impediment to effective rehabilitation in prison, compounded by the reluctance of external organizations to collaborate with prisons. This highlights the need for an attitudinal change so that the government and society view prisons as correctional facilities where prisoners can be rehabilitated, rather than punitive institutions, with commensurate increase in investment, both financial and human resources, in rehabilitation programmes.

Rehabilitation Officers themselves stated that they require more training on effective methods of correctional policy. Currently, there is minimal follow up and evaluation carried out to measure the effectiveness of rehabilitation programmes in prison and ways in which they can be improved. The primary reason for this is that the cadre for Rehabilitation Officers is not adequate to perform the many functions of the Rehabilitation Division.

These shortcomings were echoed by prisoners who stated they do not feel they are spending the time in prison productively as rehabilitation opportunities are not targeted towards ensuring prisoners are disinclined to reoffend upon release, thus putting at risk the core purpose of incarceration – the prevention of crime.

12. Prison Work

The primary purpose of prison work is to instil a sense of responsibility and keep the prisoner suitably engaged during the day, while allowing them to learn a skill. Prisoners can be engaged in a range of work opportunities in prison, from working in offices and producing items for the prison to utilize, to working outside the prison on a work release scheme. Prisoners can also be sent to open prison camps or work camps if they are serving a short sentence or have a few years left to serve, if they do not belong to certain categories, such as those accused of disobedience to officers. Open camps contain industrial parties², such as carpentry and welding as well, but are primarily devoted to cultivation. This limits the potential of prison work opportunities to effect the rehabilitation of prisoners, as prisoners may not be able to learn a skill that will benefit them upon release. For instance, prisoners engaged in cultivation at work camps and open prisons would not be able to utilise their experience productively upon release, if they reside in urban areas. Opportunities for female prisoners to work do not extend beyond work within prison and keeping the premises clean.

The conditions of work sections and premises in prisons do not meet the requirements of adequate natural light, ventilation and safety as they are often housed in old dilapidated buildings and huts. The Commission observed multiple hazard risks in work sections and the provision of safety equipment to prisoners was minimal, if not non-existent. Working conditions of prisoners are not monitored by medical officers and the lack of oversight and recommendations for improvement means that work conditions remain unfavourable. Prisoners stated they were not allowed enough breaks and time to engage in personal tasks, and as a result viewed prison work as a punishment rather than an opportunity to spend their time productively. Inmates in work and open camps alleged they have to work all seven days of the week.

Inmates also complained about the lack of equipment and modern tools, due to which most work has to be undertaken manually thereby requiring more effort and time. The requirement for skilled instructors was iterated by the Commissioner of Industries and Skills Development, for which more funds would have to be allocated.

Prisoners may be adequately remunerated when employed in outside schemes, but receive only a few cents a day for working within the prison. Remuneration rates for prisoners have not been revised in the last thirty-five years and the lowest daily wage for Grade 1 prisoners is currently Rs. 1.00, while the highest daily wage for Grade 4 prisoners is Rs. 2.50.

Opportunities for prisoners to work outside the prison and earn an income are limited, and the Commission noted that despite having the necessary policies in place, work release schemes seem to be underutilized. A work release scheme allows prisoners to be employed by a private or state entity outside the prison, where they go to work every day and earn the

² Industrial Work Parties refers to the different groups of convicted prisoners, primarily in closed prisons and work/open camps, that manufacture products to be used in the prison and by other government entities. Sometimes these products are also sold to the public. Common work parties include, carpentry, blacksmith, welding, tailoring, bakery, weaving, coir products and brick-making.

income of a regular employee, during their sentence. Prisoners currently engaged in a work release scheme return to prison at the end of each work day, even though the scheme does allow prisoners to be held in accommodation outside the prison.

Medical officers informed the Commission that prisoners categorized as unfit for work during the initial assessment by doctors continued to be employed in prison work despite their recommendations to the contrary. Inmates of certain prisons also complained they are required to work even when they fall ill.

13. Early Release Measures

The ultimate purpose of the rehabilitation process is to incentivize good conduct and reformative behaviour in prisoners, for the chance to be released early from prison. Prisoners sentenced to death and life imprisonment must first be commuted to a specific term of imprisonment, so they are able to benefit from early release measures like other convicted prisoners. These measures include remission and the system of evaluations and convicted prisoners may be released early on license, subject to their behaviour during Home Leave.

13.1. Commutation Committees

Commutation committees are appointed by the Ministry of Justice to recommend the commutation of death sentences to life imprisonment and then life imprisonment to a sentence of 20 years, and are sent to the President for approval. Commutation was formerly undertaken regularly, in conjunction with the evaluation process mentioned above, but routine commutations were also disbanded along with evaluations. Ad hoc committees are now established at the discretion of the Minister.

The offence committed by the prisoner is considered immaterial to their subsequent rehabilitation and instead factors, such as the prisoner's disciplinary record in prison and participation in vocational training during their sentence, etc. are utilized to determine if they have been rehabilitated.

A number of shortcomings are inherent in the process of commutation. The present procedure to appoint members of the committee is not transparent as the establishment of a new committee is carried out in an ad hoc manner, at the discretion of the Minister. The lack of an established working practice and criteria may cause arbitrary decisions to be made and different factors may be prioritized by different committees. The prisoner also does not have the right to appeal the decision of the committee, as 'commutation is a privilege and not a right' according to the Commissioner General of Prisons, and no reasons for rejection are provided.

13.2. Evaluations

The Prisons Ordinance provides that every convicted person should be presented for evaluation on the fourth, eighth, twelfth, fifteenth and twentieth year of their imprisonment, in order to monitor their rehabilitative progress every four years. The relevant Ministry is tasked with making recommendations regarding each prisoner to reduce, commute or release persons considered to be rehabilitated, and these recommendations are forwarded to the President for approval. This process is applicable to all prisoners, irrespective of the length of their sentence.

The system of evaluations was discontinued in 2001 following numerous protests and judicial, social and political pressure due to the public perception that people convicted of serious crimes and persons sentenced to death were being released ‘too early’. However, the Commission was informed that the prisons continue to prepare evaluation reports on every prisoner, in accordance with the statutory requirement. These reports are sent to the Ministry of Justice and even forwarded to the office of the President. However, no subsequent action or evaluation is taken thereafter. The Commission was informed by senior officers of the Department of Prisons that the system of evaluations was a highly effective and efficient correctional policy whereby prisoners could be incentivised to maintain good conduct and partake in rehabilitation, as they could be rewarded with early release following evaluation. They highlighted the need to reinstate periodic and systemized evaluations in order to find a solution for the ever-increasing numbers and mitigate the harmful physical and psychological effects of long-term imprisonment.

13.3. Remission

Remission marks refers to the daily system of awarding marks to prisoners, based on good conduct and productivity, the result of which is that prisoner would be able to forgo a portion of the sentence and be released. The remission marks for each prisoner are calculated when they enter the prison and date of early release is recorded.

However, the Commission found that the system of remission marks is not currently being utilised in a manner that would create incentive for prisoners to maintain good behaviour. For instance, the Commission was informed that the maximum number of daily marks a prisoner can earn are usually awarded to all prisoners, irrespective of whether they engaged in productive activity or remained idle all day due to lack of equipment in their work section. The blank award of remission marks would reduce the capacity of the system to enforce good behaviour in prisoners. Furthermore, the calculation of remission marks is based on quantifiable output, such as number of units produced in a work party section, which is a limited form of output assessment.

13.4. Home Leave

Prisoners are allowed to visit and stay with their families for a stipulated period of time on Home Leave, once a certain length of their sentence has been completed. The process of obtaining Home Leave entails a list of names of eligible persons is prepared by each prison and submitted to the Prison Headquarters. The Home Leave Committee in each prison, assesses a prisoner's eligibility for Home Leave, and generally comprises the Chief Jailer, a Senior Welfare Officer, a Disciplinary Jailer and Vocational Instructor while the Superintendent is the Chairman of the Committee. The list of eligible prisoners is thereafter forwarded to the Ministry of Justice for approval.

The lack of a standardized format to prepare social reports, and to assess the prisoner's progress, coupled with changes in the government causes delays in the procedure, about which prisoners often complained. There is also a lack of transparency in the process as persons whose Home Leave applications have been rejected are not given reasons for the rejection, although they are allowed to appeal the decision.

13.5. License Board

Prisoners may also be released early on license, through the License Board procedure where a committee of personnel from the prison, Ministry of Justice and Attorney General's Department evaluate a prisoner's conduct in prison during their sentence and assess suitability for early release. Delays in this procedure were attributed to the lack of resources and Rehabilitation Officers who are required to conduct field visits to the eligible inmate's hometown and report the available level of family and community support.

Female inmates are inherently at a disadvantage because the lack of rehabilitative activities and leadership positions available to women within prison prevent female prisoners from presenting a strong case for release. Another shortcoming of the process is that there is no written policy or guideline for members of the License Board to utilize when assessing a candidate's suitability to be released, and to guide subsequent committees to ensure the process is standardized and consistent. This lack of objective standards and transparency means that the personal bias and opinions of committee members may influence decisions. No reasons are given when an application is rejected by the Board. Although a departmental circular requires the names of released prisoner to be displayed so the persons rejected may be able to appeal if they wish, thus indicating prisoners can appeal the decision of the License Board, the Additional Secretary (legal) of the Ministry of Justice stated that prisoners do not have the right to appeal. The Commission also observed that where the level of rehabilitation is judged by the number of activities and positions a prisoner was involved in over the years, prisoners who may be naturally introverted and unsocial, but who may be genuinely rehabilitated, may not be able to present a strong case before the Board. As such, a psychiatric evaluation as part of the License Board procedure would also improve the quality of the process.

It was reported to the Commission that early release may be denied to prisoners who do not have supportive family to accept them or a home to return to, even when they present a strong case of being rehabilitated during the sentence period.

13.6. Special and General Pardons

The Constitution enshrines the power of the executive to use special pardons, whereby a prisoner or group of prisoners may be released or have their sentences commuted for a special reason at the discretion of the President.

General pardons are usually awarded to mark religious observances, public holidays and other special occasions. Predetermined criteria need to be satisfied by prisoners to become eligible for this pardon and they need not make a case for rehabilitation in order to enjoy the benefit of general pardons. Persons who have committed certain grave offences are not eligible.

The abovementioned measures follow an ad-hoc procedure and are solely dependent on the Ministry and President's discretion, which means the pardoning process is at the mercy of the political climate at the time. A uniform and standardized system of pardons should be in place to ensure certainty of practice and incentivize good behaviour in prisons. The discontinuation of periodic pardons was allegedly due to the abuse of the system by pardoning persons arbitrarily. The process must instead be strengthened by including relevant safeguards, which prevent the abuse of power by any authority.

The award of pardons is consistent with the criminal justice principle of restorative justice and eases the burden of overcrowding on prisons.

Part III: Special Categories of Prisoners

14. Prisoners on Death Row

The Human Rights Commission of Sri Lanka has consistently called for the abolition of the death penalty as it is a cruel and irreversible punishment that violates the right to life and right to be free from torture, cruel inhuman degrading treatment and punishment.

Although the Sri Lankan government has signed a UN moratorium on the implementation of the death penalty, persons continue to be sentenced to death and serve indefinite sentences, thereby increasing the burden on the prison system, without an efficient process in place for their eventual release. Condemned prisoners endure harsh prison conditions that even short-term prisoners find unbearable to sustain, and have to survive them potentially indefinitely.

Condemned prisoners are held in adverse prison conditions; they are required to be inside the wards for the entire day and are only allowed thirty minutes outside time for exercise, and that too is dependent on the availability of adequate officers to guard them. The

Commission was informed that a number of condemned prisoners suffer from impaired vision as a result of the time they spend inside dark wards. As condemned prisoners in many prisons are held in cells which are locked at night time and cannot access the toilets in the ward, they are required to use a plastic bucket to relieve themselves inside their cells for many decades, due to the indeterminate nature of their sentence.

The lack of meaningful activity to occupy them during the day, coupled with the conditions of detention and the thoughts of their family members, result in a number of condemned prisoners suffering serious symptoms of mental illnesses, which worsen as the time spent on death row increases. As highlighted above, prisons cannot adequately provide mental health facilities, and access to medical treatment for condemned prisoners is rife with delays because, as special prisoners, their transfer to hospital requires an armed escort and is a logistical burden on under resourced prisons.

Quantitative and qualitative data gathered from condemned prisoners highlighted a series of concerns surrounding their trials, primarily the lack of access to meaningful legal representation. Condemned prisoners stated that they were unable to afford legal fees for private lawyers as their trials took place over many years, and were therefore reliant on counsel assigned by the state. They informed the Commission that their lawyers would be absent on court dates, even the day on which the judgment was delivered, and did not mount a vigorous defence with their best interests in mind. As a result, they felt the quality of legal representation they were provided, and their financial incapacity to afford a private lawyer, were the reasons they received the death penalty.

Furthermore, criminal trial and appeals typically continue for a long period of time, even more than a decade, and the quality of evidence and witness testimonies would suffer deterioration over time. The narratives of death row prisoners alleging that their due process rights were not upheld during the course of their trial, points to the shortcomings in the judicial process, that further warrant the need to abolish an irreversible and extreme sentence of death.

A prevalent risk associated with the award of death penalty is the dire social and psychological impact of wrongfully sentencing an innocent person to death, and the resultant adverse impact on public trust in the integrity of the criminal justice system. With minimal options to review concluded cases to identify any miscarriages of justice, there is no safety net with which wrongful convictions can potentially be identified and rectified.

The impact of the death penalty on the families of condemned prisoners requires in-depth research and enlightened policy, to ensure they do not suffer the brunt of the punishment. The Commission was informed of instances where dependents of condemned prisoners would face discrimination and stigma within the community including when accessing government services, due to the detention status of their parent. Condemned prisoners, especially male prisoners who were breadwinners in their families, discussed the adverse impact of their sentence on the livelihood of their families, which was a cause of mental anguish for them. Others lamented the estrangement of family members and the lack of visits by family members.

15. PTA Prisoners

Prisoners charged with offences under the Prevention of Terrorism Act were identified as a special category of prisoners because the PTA curtails certain rights and freedoms that are guaranteed by the Constitution and by international human rights norms. PTA prisoners are therefore at risk of suffering violations of their right to enjoy due process safeguards, which directly impacted the prolonged period of time they spent in remand. In many ways, the detention status of PTA prisoners directly causes an adverse impact on their treatment and conditions.

In prison, due to the act under which they are charged, PTA prisoners reported suffering discrimination and feel they are at a continued risk of harassment or abuse by fellow prisoners, and even prison officers. Due to such treatment, all PTA prisoners stated they prefer to be housed with other PTA prisoners rather than non-PTA prisoners. Their “special” status, i.e. being categorized as prisoners who require special security, restricts their access to some entitlements such as access to medical care, because due to the severe shortage of personnel and transportation, the additional security requirements mean they are not transferred promptly to the general hospital or taken regularly to their clinics. In addition, across prisons, the majority of the PTA inmates had very little access to any vocational/skills training, education or prison work due to the nature of their “special” status and limited outside hours, limitation of language options available in such programs or because of the type of prison at which they are housed.

Family contact for PTA prisoners continues to be difficult since most of them are from the North and East and are held in prisons in the Southern part of the country. Many PTA prisoners mentioned the difficulties, particularly financial difficulties they faced retaining legal counsel, especially due to the nature of the cases, since there is stigma attached to appearing for a PTA accused, as well as the long duration taken to file an indictment and the commencement of the trial. Qualitative and quantitative data gathered during the study also highlight the negative effects of long-term incarceration that PTA inmates are subjected to, with many prisoners reportedly being in remand for up to 15-20 years.

The narratives of the prisoners illustrate that the legal provision, i.e. Section 7 (3) of the PTA, which allows them to be taken out of judicial custody to be interrogated creates space for the continued violation of their rights as many reported being subjected to torture during such periods of being taken out of prison for interrogation. It also undermines the protections afforded by judicial custody and the purpose of judicial oversight of detention.

The role of a JMO where PTA detainees are concerned is crucial to ensure PTA detainees are able to prove whether they were forced to sign confessions under conditions of physical duress. However, the Commission received numerous allegations alleging collusions between police officers and JMOs, or JMOs not being able to communicate with PTA prisoners due to language barriers. Thus, PTA prisoners would not enjoy the right to a fair trial due to the ineffective safeguards in place during their period of administrative detention, which would enable confessions obtained under torture being admissible in court.

During the trial process too, PTA prisoners reported facing numerous challenges to the full enjoyment of their right to a fair trial, including long delays and the inability to understand the language of court proceedings.

16. Young Offenders

The Commission found young offenders above the age of fifteen being held in adult prisons, which is contrary to international standards which class persons under the age of eighteen as children. They cannot, therefore, be housed with persons above the age of eighteen and in adult facilities.

Convicted young offenders and persons up to the age of twenty-two can be held at the Wataraka Training School, where they are not considered to be convicted prisoners, but rather required to undergo “training” for up to three years as a part of rehabilitation to counter antisocial behaviour. The Wataraka Training School is found inside the Homagama Work Camp for adult offenders, although young offenders are completely sectioned off from adults. Convicted prisoners between the ages of eighteen and twenty-two are also found in closed prisons and open camps, as the judge has the discretion to sentence an offender to ‘training’ in Wataraka, or to serve a prison sentence at a closed prison or work camp.

The Wataraka Training school has a lack of officers specializing in behavioural issues and youth guidance counsellors to encourage rehabilitation and reformation of young people. Instead, young offenders are subject to violence as a means of discipline and punishment. Due to the difficult relationship of inmates and officers, young offenders are reluctant to report any grievances or concerns for fear of being subjected to further violence. Despite the requirement for young offenders in Wataraka not to be treated as convicted prisoners, they are housed in cells, with multiple inmates in a single cell, required to use a plastic bucket to relieve themselves at night time. They are allowed to remain outdoors for a limited period of time, a few times a week, and not at all on Sundays, which restricts their physical and mental development. Such conditions limit the supposed aims of the Training School and may in fact have the opposite effect on the psychosocial development of the young offender.

Wataraka Training School contains the Suneetha School where young offenders are able to complete their secondary education, from Grade 9 up to Advanced Level. It was pointed out by the Superintendent of Wataraka that, due to the impoverished background of many young offenders, they may not possess the standard of education required to complete Grade 9. The minimal options for vocational training opportunities also deprives them from learning employable skills upon release. Young offenders informed the Commission however, that attending school was the only semblance of normalcy in their lives, and the separation from their families was a reported cause of anguish to them, from which school days provided temporary relief.

The Commission was informed of the behavioural and psychological issues with which young offenders were dealing, that were exacerbated by the conditions of Wataraka. For instance, it was stated to the Commission that many young offenders engage in self-harm

and are beaten up when caught doing so, rather than being provided medical and psychiatric treatment and counselling. Young offenders caught committing offences during their time at Wataraka would be transferred to the Pallansena Youth Correctional Centre where they are given the status of convicted prisoners.

The Commission found that remandees under the age of right are held in remand and closed prisons meant for adults. They are housed in wards designated for young offenders, which may also contain persons aged up to twenty-two years. These young offenders suffer similar conditions as young offenders in Wataraka, and do not receive the legal aid, counselling and post-release support they require. Their interaction with adults in the remand prison is restricted by confining all young offenders to a single ward, and limiting their outside hours. This was a noted point of contention among young offenders who complained about minimal time for exercise, sporting activities and fresh air.

Holding persons under the age of eighteen in adult prisons can lead to the criminalization of young persons as they may be exposed to criminal behaviour while in prison. Further, the social stigma of imprisonment can have severe adverse consequences on the life opportunities available to young persons. This is particularly concerning in female prisons where there is no segregation of prisoners at all.

17. Foreign Nationals

Foreign nationals in the Sri Lankan prison system experience similar challenges to those of their local counterparts, but their conditions in prison are exacerbated by the language and cultural barriers they face, as well as the lack of family support. Foreign nationals typically spend lengthy periods in remand prison and prolonged remand periods become a precursor to pleading guilty, simply to expedite court proceedings, because a definite sentence is considered better than indeterminate remand.

Foreign nationals grapple with language barriers in a criminal justice procedure which primarily operates in Sinhala language. The Commission was informed that their requests for translators in court have resulted in delays of up to two years, during which their proficiency of English and Sinhala improves, and the request subsequently becomes redundant.

As foreign nationals do not receive family visits, they do not have access to basic provisions and toiletries and become reliant on local inmates to source necessary items. Prisons also do not provide foreign nationals with means to communicate with persons abroad resulting in them becoming virtually cut off from contact with family as well as access to their finances. The lack of communication with their family was the single biggest reported grievance mentioned by every foreign national, and the underlying cause for their suffering in prison.

Foreign nationals complained they are not able to communicate with prison officers due to language barriers, and in an altercation between local inmates and foreigners, officers are more likely to accept the version of events presented by the local inmates as foreigners are

often unable to coherently present their version of events. Foreigners described the discrimination they faced, on the basis of their nationality, from prison officers, inmates and even medical officers, who taunt them for the offence for which they are in prison.

Foreign nationals have constrained access to legal representation due to the lack of information they possess on legal procedures and local lawyers. Many foreign nationals complained about being defrauded by local lawyers whom they were forced to hire without adequate background information. The status quo is exacerbated when they do not have means of communicating with their lawyers from inside prison, and their family members are too far away to provide efficient assistance. Most foreign nationals the Commission came across wished to be repatriated to their country, where they could complete their sentence and be closer to their families which would enable easier social reintegration upon release. However, repatriation procedures are highly bureaucratic and subject to delays and setbacks due to changes in the political climate.

18. Women

The population of women in prison remains quite low, and this may be the reason they are not provided the same standard of correctional services as men in prison. Women also face certain gender specific issues during incarceration that must be addressed by policy makers.

Women in prison have access to meagre rehabilitation opportunities and are not able to engage in industrial work, such as weaving and cultivation or be sent on work release schemes. Instead, they are primarily engaged in sewing or maintaining the cleanliness of the premises. If women had the opportunity to engage in a diverse range of work and receive training in professions/skills, it could also provide better employment opportunities post release.

Female prisoners also complained about the lack of access to sanitary napkins, as these are not distributed by the prison unless a donation is made to the prison by an external organization. While remandee women rely on their family members to supply them with sanitary napkins through family visits, convicted women and foreign nationals obtain them by completing tasks, such as washing dishes and clothes, for other inmates who have an adequate supply in return for sanitary napkins and toiletries.

Women also complained about the impeded access to healthcare as most female sections do not have Prison Hospitals, and doctors visit the female section only on certain stipulated days and times, and cannot be accessed outside of that time. Consequently, access to medical treatment at night time is severely limited and women would have to suffer symptoms until the next time the doctor visits. There is also an inadequacy of female medical personnel in the prison healthcare system, because fewer applications of female medical personnel are received, according to the Department of Prisons. This is thought to be because less females are inclined to work at a prison.

Women are allowed to keep their children who are under five years old with them in prison. However, children in prison do not receive the facilities they require for healthy growth and development, such as access to suitable and nutritious food, to preschool, toys and books. Children may also not be taken for periodic visits to a paediatrician as this is subject to logistical limitations.

19. Prisoners with Disabilities

Prisoners with disabilities are arguably one of the most vulnerable and disadvantaged groups in the prison system, primarily because of the poor provision of disability access. The Commission observed that elderly prisoners experience similar problems as prisoners with disabilities due to age-related illnesses and impaired mobility.

Dilapidated stairs and the lack of railings were commonly seen in the prison hospital and wards. Prisoners with lower body disabilities complained about the difficulties they face in completing the most basic functions, such as using the toilet, since most prisons only contain urinals or squat toilets. These prisoners are completely reliant on the good will and assistance of their wardmates to perform basic functions.

Elderly inmates often find it difficult to receive medical treatment for the symptoms they develop over time due to the overburdened prison healthcare system. The prison is usually unable to provide prisoners with disability aides, such as wheelchairs, prosthetics and white canes, which are sourced by prisons through donations.

The Commission was informed that a Medical Board, which is tasked with deciding if a prisoner can be discharged on compassionate release due to their physical or mental impairments, is rarely convened. The procedure involves an application on behalf of the relevant prisoner being submitted to the Ministry of Health, which then convenes a Medical Board comprising of an expert on the candidate's condition. The non-functioning of the Medical Board is due to the procedure involving coordination and cooperation between three entities: Department of Prisons, Ministry of Justice and Minister of Health. For instance, the Commission was informed by the Ministry of Health and the Department of Prisons, of two different and contrasting procedures to convene the Medical Board indicating the lack of clear systems. As a result of overlapping duties and bad communication, eligible prisoners are not presented before a Board of specialists, despite their repeated requests.

Part IV: Prison Management

20. Challenges Faced by the Prison Administration

Prison administrations from around the country complained about the severe shortage of staff, which seriously impacts their daily functioning, services provided to prisoners and the wellbeing of prison officers.

Although the number of prisoners has increased over time, the cadre of officers has not been duly revised nor increased proportionately, as a result of which the ratio of officers to inmates is very low. The shortage of staff requires a single officer to perform multiple roles, work long hours and undertake consecutive shifts. This adversely impacts efficient administration of the prison, increases security concerns and is the primary cause for procedural delays within the institutions, such as in the transfer of prisoners to hospitals, License Board procedures, inadequate outside time, etc.

The level of training received by prison officers is inadequate, because although they are required to undergo induction training, according to senior officers, they cannot be released from their duties for in-service training. As a result, a long serving officer who received induction weapons training many years ago, may not be in a position to respond in a safe manner, respecting necessity and proportionality, in an urgent situation, as s/he has not undergone in-service training.

Prison officers informed the Commission that they are not able to support their families on the current remuneration they receive. Due to the lack of funding for the Department and the unrevised system of allowances, many a time, prison officers may not be paid for working overtime. Further, the dangerous nature of their daily work and the constant threat to their lives is not reflected in the allowances and benefits they receive.

The compounded impact of stressful working conditions, long shifts and insufficient pay causes prison officers to suffer high levels of burn out and loss of job satisfaction. As a result, they often experience psychiatric symptoms for which they do not have access to counselling or treatment. Complaints were also received about the living conditions of the officers' quarters, specifically the accommodation reserved for unmarried prison officers, which added to their level of job dissatisfaction.

Female officers in particular stated that the impact of the job on their family life was a major concern, as they could not give their family members and children due time and attention, specifically when they were stationed at duty stations away from their residence. Female officers discussed sexual harassment they faced in the workplace, but found it difficult to pursue remedies as they feared facing reprisals for complaining and could not risk their job security.

The Commission observed prison officers at open and work camps fared better because these prisons are situated away from the city, in wide and open spaces. Camps are not usually overcrowded, and the officers do not have the burden of court duty as they house convicted prisoners. Senior officers routinely highlighted that the impact of the conditions of their work environment, personal problems and adverse mental state, is a determinant of the treatment of prisoners by prison officers.

Part V: The Criminal Justice Process

21. Arrest and Detention

Although the conduct of police officers was not part of the focus of the study, the Commission received a large volume of complaints from prisoners alleging they experienced misconduct by police officers while in police custody, elements of which are raised below and require further investigation.

A number of allegations were received alleging the failure of police officers to follow due process standards during arrest and detention, including the failure to produce arrest warrants or reasons for the arrest to the detainee, and the prevention of contact with family and legal representatives while in police custody. Some prisoners stated they only became aware of the charges against them when they were produced in court. Prisoners also alleged they were held in police custody for longer than the 24-hour limit, before being produced before a magistrate, and this was executed by altering dates/times of arrest on the police records or court document.

A large number of inmates described being asked to provide a signature on a blank piece of paper onto which a confession would be written or typed by the police; the contents of the statement are not informed to the suspect. Inmates reported being subject to intimidation and threats of physical violence, suspension of meals in custody, prolonged detention without bail, and threats to the security of their families when they resisted providing a statement as requested.

The failure to follow process standards during arrest and detention was widely reported by PTA prisoners. The patterns in the arrest process narrated by the interviewees illustrated that it did not adhere to due process safeguards, with many reported being abducted from their homes, workplaces or while travelling, families not being provided an arrest receipt or provided information on the place of detention, being held in unauthorized places of detention, and being subjected to torture and forced to sign confessions in a language they did not understand. Their contact with family and lawyers was prohibited during the days, weeks and in some cases even months following the arrest, with some families not being informed of the arrest even months after the arrest. Being held in prolonged incommunicado administrative detention, without judicial oversight to monitor the detainee's wellbeing, creates a situation that allowed confessions to be obtained under physical duress. Despite the directives and safeguards enshrined in law, without an oversight and accountability mechanism in place for arresting authorities, or effective judicial oversight, protecting the wellbeing of detainees arrested under PTA will not be possible.

A number of specific trends were observed among the procedures used to arrest women. It was often reported there were no women police constables at the time of the arrest and transportation to the police. Women police constables were reportedly also not present when many women were held overnight at the police station. Serious allegations were made by several women who stated the female police undertook invasive body cavity searches while arresting them in order to search for drugs. Several female detainees also alleged they

were subject to sexual harassment by police officers. Such allegations illustrate the vulnerable position of women in police custody and the need to enforce safeguards to protect their dignity and personal security.

While such claims presently remain mere allegations, the trends and patterns in the complaints against conduct of police from around the country, specifically the element of violence inherent in arrest and detention procedures, cannot be ignored and requires serious investigation. Confessions obtained under duress are likely to distort the functions of the criminal justice process and incarceration, and render it inefficient in the prevention of crime. There is also a need for prisoners to be able to lodge complaints against the police and be provided information on the progress of the investigation of their allegations, while they are being held in prison.

22. Access to Legal Representation

The Commission observed that the lack of access to effective legal representation was a grievance of persons from impoverished backgrounds who struggled to pay legal fees and have had to resort to selling their assets and compromising their livelihood, to do so. Where such persons do not have adequate literacy and cannot follow legal proceedings, they are not able to hold their lawyers accountable. Their bargaining power is reduced and as a result, such individuals become vulnerable to unscrupulous lawyers.

The Commission also came across persons who could no longer afford legal fees during a prolonged criminal trial, which can continue for up to twenty years in the Sri Lankan judicial system, and thus became reliant on state assigned counsel. There exists a general perception that state assigned counsel do not undertake their duties with diligence – they do not visit the prison to inquire with a remandee, and hardly speak to the inmate for even a few minutes before the hearing is due to commence. This raises questions about their ability to prepare a vigorous defence following virtually non-existent communication with the defendant. This is perhaps a reason many prisoners complained that their lawyers did not stand up or speak up in court, or cross examine witnesses. Since the quality of legal representation impacts the sentence awarded to the defendant, this may result in persons from lower socio-economic backgrounds receiving harsher sentences due to their financial status rather than culpability, which undermines the integrity and purpose of the criminal justice system.

The attendance of lawyers and state counsel in court directly correlates to the length of the trial; when lawyers are absent, the case has to be postponed to another date. In appeal cases, the next date could be after six to twelve months, the duration of which has to be spent in prison by the appellant. Non-attendance at trials is particularly adverse for defendants who raise the money to pay lawyers' fees with much difficulty. It must also be pointed out that the transfer of an inmate to court places a hefty burden on the understaffed prison department as well as the taxpayer, requiring a number of escorting officers and prison buses, which sometimes have to travel long distances when a prisoner is tried in a court out of town. When individuals are transferred to court only to find their lawyer or the state counsel is not in attendance, it results in the waste of public resources.

The Legal Aid Commission attempts to provide assistance to remandees to post bail or reduce bail conditions, but stated it does not receive adequate funds to conduct legal clinics in prisons regularly and provide legal information and representation for remandees in regional prisons. Furthermore, the Legal Aid Commission is not equipped to provide legal aid for a defendant accused of serious crimes, as such a case typically continues for a number of years. As a policy of the current Commission, persons arrested on drug related charges are not provided legal aid.

23. Legal and Judicial Proceedings

The large number of pretrial detainees in prison is an indication of the shortcomings of the criminal justice system, where persons unconvicted of a crime spend a prolonged duration in prison, until the conclusion of their trial.

One reason for the prolonged time in remand is due to stringent bail conditions. The Commission came across many remandees in prison who were eligible for bail but could not furnish bail due to the stringent conditions imposed on them. Persons who cannot meet bail conditions have limited access to means of communication from inside prison to arrange a lawyer to file a motion on the accused's behalf and request an alteration of bail conditions. Persons who are not detained in close proximity to their family members, as well as foreign nationals, would become extremely helpless in such situations as they do not have local contacts to communicate with lawyers on their behalf.

Without access to legal representation to request bail or alter bail conditions, persons on remand who may be eligible to be released on bail remain in prison. Therefore, the denial of bail or the imposition of bail conditions that persons are unable to fulfil, have a direct impact on overcrowding in prisons. Further, the need to remand persons who have committed minor offences, where small-time offenders can be exposed to persons with serious criminal records, requires careful scrutiny, and the use of non-custodial measures to mitigate this risk has to be explored.

The refusal of bail or the extension of periodic remand in a Magistrate's Court requires adequate scrutiny and review by a judge to ascertain the continued need for an individual to remain in prison. However, it was reported to the Commission that defendants have inadequate opportunity to present their case, before a decision to refuse bail or extend remand is pronounced. Many prisoners informed the Commission that the presiding Magistrate did not acknowledge their attempts to speak in court. The prosecution or police reportedly often become de facto arbiters of the need for detention, as their direction is followed with inadequate independent and impartial assessment of the need to prolong pretrial detention.

Persons who cannot afford expensive legal services, or adequately follow or understand legal proceedings, become mere spectators in the determination of their freedom. Persons who do not understand their charges and cannot follow what ensued in court would not be able

to prepare an adequate defence. Furthermore, they will also not be able to hold their lawyers accountable and ensure they are not being subject to lawyer misconduct or malpractice. Court hearings may be incomprehensible for persons who cannot follow the legal jargon at the hearing or do not speak the language of the region. Requests for translators have the counter effect of causing year-long delays in the case proceedings, rather than improving the defendant's chances of preparing a vigorous defence.

A combination of the above-mentioned factors results in defendants from low income strata of society not being able to enjoy the due process rights to which they are entitled. The right to trial without undue delay is not followed, but rather trials continue for a prolonged duration of time, and many remandees and appellants spend that period of time in prison. The Commission was informed that the prolongation of the trial can also result from administrative delays in the Attorney General's Department or the Government Analysts Department, particularly in drug related cases. Thus, the deprivation of liberty is attributable to the inefficiencies of state institutions. Prolonged court cases reportedly encourage many people to plead guilty, solely to conclude the proceedings, as a defined sentence period is thought to be preferable to indeterminate remand.

The overcrowding of prisons is also impacted by the large number of convicted prisoners serving imprisonment due to the inability to pay fines and the non-payment of debt and maintenance payments. The incarceration of such persons, rather than awarding them a non-custodial alternative which will enable them to earn an income and even pay back maintenance arrears, illustrates that the poor are disproportionately imprisoned for their lack of finances.

Inmates also complained to the Commission about their transfer from prison to court, whereby multitudes of prisoners are transferred in a single bus, and many elderly prisoners are required to stand during lengthy journeys. Persons attending appeal court hearings from outside Colombo reported they were not provided meals during the journey and have to use polythene bags to relieve themselves, while in handcuffs. The prison authorities informed the Commission that, as a result of the lack of officers and the inadequate vehicles provided to the prisons, they are forced to transfer prisoners in this manner.

At the Magistrate's Court, remandees would be held in the Magistrate's Court cell, where defendants are required to stand all day and are not provided access to toilet facilities, although some may receive meals during lunchtime.

Part VI: The Continuum of Violence

24. The Continuum of Violence

The Commission has observed that violence is an entrenched feature of the criminal justice process, with persons who are arrested being subject to violence in police custody, remand prison and during incarceration. Violence in police custody was found to be an inherent element of the investigation process, whereby torture is inflicted to extract information, confessions and evidence from detainees.

Violence in prison includes physical and verbal abuse, as well as intrusive body searches, which are not undertaken with respect for the personal dignity of prisoners. Perpetrators of such conduct very often go unpunished and there is no intervention or break in the cycle of violence. This is likely due to the government and social narrative which considers prisoners as “undesirables” who are deserving of punishment, by virtue of the crime they have committed, and hence violence inflicted on offenders does not cause a public outcry. Since the use of violence is viewed as the primary means of maintaining order within the prison, prison officers appear to believe that it is imperative to establish a dynamic of power to subdue inmates, and punish any resistance. It was noted that violence is primarily inflicted on persons from lower socio-economic groups who are unable to stand up to authorities, and whose ill-treatment in prison goes unnoticed in the public domain.

An overhaul of the entire penitentiary system is required to cause a shift from the mentality of retribution to rehabilitation and correction, and is dependent on political will and the allocation of resources. Officers require training in non-violent means of restraining prisoners and maintaining order, as well as human rights, to improve their understanding and capacity to perform correctional services/functions.

Part VII: Alternatives to Incarceration

25. Alternatives at the Sentencing Stage

The use of non-custodial measures instead of incarceration is a shift from a punitive approach to restorative and rehabilitative policies, thereby reducing the burden of overcrowding and its associated problems on the prison system. The national legal framework on non-custodial measures comprises three main programmes:

25.1. Community Based Corrections

When imprisonment for an offence is not mandatory or does not exceed two years, a correctional order may be imposed instead of a prison sentence. A court would issue a correctional order best suited to the offender, which could include conditions, such as the requirement to undergo rehabilitation in the case of drug offenders, community work or supervision.

However, presently there is a serious underutilization of Community Based Corrections in the criminal justice process, which limits its success. One reason for this, as informed to the Commission, is the reluctance of judges to call for pre-sentencing reports which causes a prolongment of the case, while imprisonment is viewed as a quicker way of concluding the case. Also, the lack of awareness of what Community Based Corrections entails, and the mentality that offenders require punishment rather than rehabilitation, are reasons there appears to be an inherent bias against Community Based Corrections.

The Department of Community Based Corrections currently grapples with a lack of funding, due to which it cannot provide drug rehabilitation/treatment or vocational training without assistance from other institutions. Restricted funding also prevents efficient monitoring and evaluation of those undergoing Community Based Correction.

25.2. Rehabilitation of Drug Dependent Persons

The Commission found that no distinction is made between drug dependent persons and drug traffickers; while the latter may be imprisoned the former requires medical care and treatment.

A judge is empowered to order an offender to undergo rehabilitation at the treatment centres managed by the National Dangerous Drugs and Control Board. The paucity of medical personnel at treatment centres to treat drug offenders hinders the success of court ordered rehabilitation as an alternative to imprisonment, as treatment centres have visiting consultants and not resident doctors. Doctors also prescribe medication as treatment, which the drug dependent person may not be able to afford. The few existing treatment centres do not possess the capacity to meet the demand for drug rehabilitation.

There is also a lack of standardized policy to assess the drug dependency of a user to determine the treatment required. Individuals referred to the Kandarkadu Drug Treatment Centre and in transit at the Welikada prison informed the Commission they were not examined by a medical officer, nor administered any medical test to ascertain drug dependency before they were ordered to undergo rehabilitation at Kandarkadu. The lack of a uniform sentencing policy for drug dependent persons is observable as the order for treatment is based on judicial discretion.

25.3. Probation

The third non-custodial measure available under the national legal framework is probation, which is the least restrictive alternative, as a person is required to remain in their residence under certain probationary conditions designed for the individual.

The award of probation is not governed by certain stipulated criteria that must be satisfied, but rather courts must assess the nature of the offence, sex and condition of the offender on a cases-by-case basis to determine if probation is more suitable than imprisonment. This is a much needed and progressive alternative to imprisonment, and provides a solution to reduce the cost of incarceration on the taxpayer and society, but there is a lack of awareness surrounding this option. The Department of Child Probation, which is mandated by law to administer the system of probation does not in practice deal with the probation of adults and instead focuses only on probations issues related to children. Hence, at present, there is no designated entity tasked with undertaking and managing adult probation.

2. Introduction

'The petitioner may be a hard-core criminal... but if constitutional guarantees are to have any meaning or value in our democratic set up, it is essential that he not be denied the protection guaranteed by our Constitution'.

Atukorale, J (Amal Sudath Silva V. Kodituwakku
S.C. No. 186/86. May 5, 1987).

The correctional system in Sri Lanka has featured in public discourse only when a riot or similar incident of violence has taken place, and public discussion on prison conditions and the correctional system has largely been absent. At the same time, there is little information on the correctional system in Sri Lanka in the public domain, with virtually no original empirical research available on this issue. Collectively, these factors have caused the rights of prisoners to be largely excluded from the national human rights discourse and thereby also from public consciousness.

Sri Lankan prisons are severely overcrowded and hold a large number of pretrial detainees. Patterns observed in prisons globally indicate that the impact of such overcrowding would include the lack of access to healthcare, higher rate of illnesses, poor provision of rehabilitation programmes, psycho-social support and problems related to maintaining order due to inadequate prison officers. As a result, the correctional system moves away from its main purpose, i.e. the rehabilitation and social integration of offenders. If these issues are to be addressed then the root causes have to be identified. Globally it has been observed that often the main cause of overcrowding is an ailing and overburdened criminal justice system, which points to the need for systemic change.

The Commission as the only national entity with unfettered access to any place where persons are deprived of liberty, undertook special visits to prisons in the country. However, such visits were ad-hoc rather than routine, since the routine inspections of police stations formed the bulk of the Commission's inspection and monitoring function. Complaints received from prisoners and their families were relatively small in number, and prison visits would be undertaken mainly to obtain statements from prisoners in relation to the complaints received. Although prisoners comprise a significant group of persons at risk of suffering human rights violations, the access prisoners have to the Commission is severely restricted since they cannot send confidential letters or call the Commission's hotline from prison.

In 2016, the Human Rights Commission submitted its findings to the Committee Against Torture, at the 5th Periodic Review of Sri Lanka. The report stated that the detention conditions of Welikada Closed Prison fell far below international standards, and outlined the concerns surrounding access to healthcare and accommodation of prisoners in the largest

prison in the country. Complaints lodged by family members of prisoners also indicated that physical violence was ubiquitous, although the extent of it was undetermined.

The Commission recognized the glaring gap in information about the conditions in prisons and the level of compliance with human rights standards, and realized the need to conduct an in-depth study of prisons. The study was planned with the intention of exploring all aspects of life in prison and uncovering the underlying shortcomings of an incarceration system that does not appear to be fulfilling its purpose. The aim of this study, therefore, is to examine the current state of prison conditions in Sri Lanka, assessing whether the State has adhered to constitutional and international standards in the treatment of prisoners, and to investigate the reasons for failures, if any, to meet international human rights standards and make recommendations for reform. In particular, the study aims to ascertain whether the current correctional system fulfills its stated purpose of rehabilitation and social re-integration of prisoners.

While the UN Standard Minimum Rules for the Treatment of Prisoners were employed as the basic threshold to evaluate conditions, information gathered by the Commission over the years through complaints and prison visits, coupled with the few available short articles and reports on Sri Lankan prisons, were reviewed to formulate the research questions. The lack of literature on Sri Lankan prisons was a limitation, since the study was being designed without adequate prior knowledge of the status quo – however, this consideration reinforced the idea that any finding would be a positive addition to current corpus of knowledge.

The Commission is aware this study is only the first step towards reforming the correctional system and envisages it will contribute to much needed reform of the prison system. This study is based on the principle, which the Commission reiterates as part of fulfilling its mandate, that a society may only lay claim to being governed by democratic values and fundamental rights if constitutional guarantees are also applicable to persons occupying the lowest rung of the social hierarchy.

1. Human Rights Commission of Sri Lanka

The Human Rights Commission is an independent commission established in 1997, pursuant to the enactment of the Human Rights Commission Act No. 21 of 1996, to promote and monitor protection of fundamental rights guaranteed by the Constitution and ensure compliance by the Sri Lankan government of international human rights standards.

Following the enactment of the 19th Amendment to the Constitution in 2015, the procedure to appoint members of the Commission was made independent by affirming that ‘no person shall be appointed by the President as a Chairman or member of any Commissions except on a recommendation of the Constitutional Council’ (Article 41B).

The Commission, as an independent body, is answerable only to the Parliament as enshrined in Article 41 B (6) of the Constitution. The Commission presents regular reports to the Parliament which outline all matters referred to the Commission during the year, as well as

any action taken and recommendations made (Section 30 of the Act). The Commission does not act upon the instructions of the government. Its daily operations are headed by the Chairperson and four Commissioners, who are also responsible for appointing the Secretary and Staff of the Commission.

The mandate of the Commission includes, *inter alia*, the power to inquire into any complaint of fundamental rights violation or imminent fundamental rights violation and grant suitable redress, including compensation. The Commission also has the power to intervene in a matter pertaining to fundamental rights before any court (Section 11 (c)) and the authority to scrutinize national laws, administrative directives and practices to ensure they are in accordance with international human rights norms through the release of recommendations to government (Section 10 (d)). Further, the Commission is mandated to raise public awareness and engage in educational activities on human rights (Section 10 (f)).

The Commission has the mandated function to monitor the welfare of persons detained, by regular inspection of any places of detention, and to make such recommendations as may be necessary – Section 11 (d) and Section 28 (2) of the Act. This makes the Human Rights Commission the only entity in the country with unfettered access, without prior authorization, to any place where a person is deprived of liberty to inspect, report and make recommendations on the improvement of their treatment and conditions in compliance with international standards.

2. A status accreditation

In May 2018, the Human Rights Commission of Sri Lanka was accredited as an ‘A’ status national human rights institution by the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions (hereinafter referred to as GANHRI).

The Commission had been downgraded to ‘B’ status in 2007, which was further renewed in 2009, due to non-compliance with the Paris Principles - the international standards for human rights institutions. Following the appointment of the new Commission by the Constitutional Council in 2015, the Commission renewed its commitment to act as an independent monitoring and oversight body in ensuring compliance of the State with the fundamental rights enshrined in the Constitution and international human rights standards.

3. National Preventative Mechanism (hereinafter referred to as ‘NPM’)

On the 14 November 2017, the Cabinet of Ministers approved Sri Lanka’s accession to the UN Optional Protocol to the Convention Against Torture (hereinafter referred to as OPCAT), and the Human Rights Commission was named the NPM. By virtue of Article 20 of the OPCAT, the State is required to grant access, and all information related, to places of detention to the NPM, and to speak to persons without witnesses and inspect the conditions of detention. The NPM can make recommendations to the State to improve the treatment and conditions of persons held in detention and make observations on draft and existing legislation.

Furthermore, as the NPM, the Commission is expected to submit periodic reports to the Sub-Committee on Prevention of Torture. Even though the Commission is already authorized to visit places where persons deprived of liberty are held and make recommendations to the state, being designated the NPM strengthens the powers of the Commission to protect and promote the rights of persons held in custody.

3. Methodology

1. Research questions

Two overarching research questions shape the scope of this study:

- i. To what extent has Sri Lanka implemented/adhered to national and international human rights standards pertaining to the treatment of prisoners and conditions of their detention?
- ii. What are the underlying legal, social, institutional and policy issues that impact the human rights of prisoners in Sri Lanka?

2. Sample

Twenty institutions within the purview of the Department of Prisons (hereinafter referred to as DOP) were selected as the sample of institutions for this study. The highest populated remand prison in each province, the highest populated work camps within the prison system, and all open and closed prisons were selected, in an attempt to represent the national remandee to convicted proportion of 52%:48%.

List of sample institutions:

1. Agunukolapella Closed Prison
2. Anuradhapura Remand Prison
3. Anuradhapura Open Prison Camp
4. Badulla Remand Prison
5. Batticaloa Remand Prison
6. Colombo Remand Prison
7. Galle Remand Prison
8. Homagama Work Camp
9. Jaffna Remand Prison
10. Kegalle Remand Prison
11. Kuruwita Remand Prison
12. Kuruwita Work Camp
13. Mahara Closed Prison
14. Negombo Remand Prison
15. New Magazine Remand Prison
16. Pallekele Closed Prison
17. Pallekele Open Prison Camp
18. Wariyapola Remand Prison
19. Weerawila Work Camp
20. Welikada Closed Prison

NB:

As a rule, the prison administration of each institution was not pre-informed of the visit by the Commission. Hence, according to the mandate of the Commission, all prison visits were conducted without prior notice.³ This rule was observed to ensure the conditions of the prison were not altered or affected in any way prior to the Commission's visit.

An officer of the Human Rights Commission informed the Wariyapola Remand Prison of the Commission's forthcoming visit, which resulted in the prison undertaking measures to change the conditions at the prison. As a result, the findings from Wariyapola Remand prison were excluded from this report because the findings would be compromised, and hence misrepresented. In order to maintain the proportions of convicted to remandee Kegalle Remand Prison was added to the sample of institutions. Although the data was not used in the analysis, a follow up SP meeting⁴ was conducted with the SP of Wariyapola Remand Prison to raise issues regarding prisoners' treatment and conditions.

Inmates were divided into the two general categories of remandee and convicted prisoners. The category of convicted prisoners also included condemned and life prisoners. The number of questionnaires to be administered for each category of prisoners was derived from the data provided by the DOP, setting out the total population breakdown of each prison as at 5 April 2018. The total number of prisoners held in all institutions within the purview of the DOP, as at 5 April 2018, totaled 18,426, with 17,524 male prisoners and 902 female prisoners.

Of the total population of male prisoners, 13,870 inmates from the sample institutions were included in the sample of prisoners for this study, i.e. about 79% of the male prisoner population of Sri Lanka. Due to the small percentage of female prisoners in the total prison population (5%), the Commission administered questionnaires to all women in the sample prisons that the Commission visited in order to optimally uncover and identify the issues they faced. The number of female prisoners in the sample totaled 732, i.e. about 81% of the female prisoner population.

Table 3.1: Breakdown of prisoner sample:

	Male	Female
Convicted	5,187	142
Condemned/Life	1,504	87
Remandee	7,179	503
Total	13,870	732
Total Sample Population		14,602

³ Human Rights Commission Act (No. 21 of 1996), s 28.

⁴ For a detailed discussion, please refer chapter Postscript: Follow up

3. Categories of prisoners

- Convicted prisoners**

Convicted prisoners constitute 48% of the total population of prisoners and are required to undergo the rehabilitation process of the prison by virtue of their conviction status. The entitlements of convicted prisoners are restricted to a greater degree, in comparison to remand prisoners, as outlined in prison legislation. Normal convicted prisoners are required to spend a definitive amount of time in prison, while life and condemned prisoners serve indefinite sentences. Convicted prisoners participate in rehabilitative programmes and educational and vocational training, as part of their sentence as well as undertake assigned prison jobs.

- Remandees**

Pre-trial detainees or remandees constitute 52%⁵ of the total prison population in Sri Lanka. This statistic, combined with the information from the DOP Statistics for the year 2019, illustrate that remandees spend many years in prison awaiting trial. This study will thus explore the conditions and treatment of unconvicted detainees in remand, and pay attention to the legal and policy issues that have resulted in a disproportionately large remandee population.

Certain groups were flagged as special categories of prisoners to uncover the impact of their particular characteristics or detention status on their treatment and conditions in prison:

- Prisoners on death row**

Despite the fact that Sri Lanka has maintained a moratorium on the death penalty since 1976, persons continue to be sentenced to death. Such prisoners are ‘condemned’ to a life in prison where they serve an indeterminate sentence, and are subject to long periods of confinement, reduced outside hours and no access to rehabilitative programmes or activities to keep them occupied throughout the day.

- Persons arrested under the Prevention of Terrorism Act**

The Prevention of Terrorism Act (hereinafter referred to as PTA) allows individuals to be detained without charge for up to eighteen months and requires the approval of the Attorney-General to award bail. The possibility of long-term detention, including extended pre-trial detention, of which eighteen months could be administrative detention, and their suspected status as threats to national security may increase the vulnerability of persons remanded and convicted under this law. In the study, PTA inmates are distinguished

⁵ The population of prisoners has increased since April 2018. The number of male remand prisoners, as of 3 February 2020 is 14,607 and the number of male convicted prisoners is 10,500. Thus, the present remandee to convicted proportion is 58% to 42%. The number of female prisoners is 1,296.

according to their conviction status for quantitative reporting purposes. i. e. PTA Remandee, PTA Convicted.

- **Young offenders**

Despite the requirement for young offenders to be held in juvenile detention centers, offenders under the age of eighteen are often held in adult prisons, thus placing their safety and security under threat. This would also increase the risk of breeding criminality in prison if young offenders come into contact with offenders charged for committing major crimes.

- **Women prisoners**

Women in Sri Lankan society experience considerable discrimination and marginalization, and an environment (such as prison) that places constraints on the exercise of their rights exacerbates their existing vulnerabilities.

- **Foreign detainees**

Foreign national prisoners would likely suffer from considerable language and cultural barriers in Sri Lankan prisons and are an internationally recognized vulnerable group due to their specific grievances and needs, such as access to consular representatives.

- **Prisoners with disabilities**

Sri Lanka currently has a poor record with regards to implementing international and national standards on disability rights and access. Hence, in a prison environment, due to problems such as the lack of funding, the rights of prisoners with disabilities and facilitation of their equal access may receive lower priority.

4. Research methods

4.1. Prison inspections

All prison visits were conducted under the mandated power of the Commission to enter a place of detention without giving prior notice.⁶ The principle of ensuring the prison administration was unaware of the Commission's visit was a fundamental criterion for conducting prison inspections. All prison visits were conducted between April and September 2018. The visit to each prison lasted an average of four days, with the team sometimes spending five or six days at a prison if the prison was larger and more time was required to access all prisoners and all parts of the institution.

Inspections of the facility were always conducted on the first day of each prison visit, in order to minimize the risk of prison authorities changing the conditions of the prison in

⁶ Human Rights Commission Act No 21 of 1996, ss 11 (d), 28 (2).

anticipation of the Commission visiting the next day. The research team surveyed the entire facility and inspected prison cell and ward conditions, as well as the conditions of the washrooms, kitchens, visit rooms, medical facility and the preparation of food. Conditions of work places, as well as the conditions at open camps and closed prisons were also inspected. Condition and maintenance of all prisoner records, the various record books maintained in each prison, as well as the system of remuneration for prisoners and storage of their personal possessions were examined.

The team made notes of any adherence to or violations of the Nelson Mandela Rules using the checklist of the Rules formulated by the United Nations Office on Drugs and Crime (hereinafter referred to as UNODC) to help assess compliance of Sri Lanka's prison conditions with constitutional and international standards.

4.2. Questionnaires

Questionnaires were self-administered by prisoners and respondents were selected using a random sampling technique based on voluntary participation, guaranteeing full confidentiality to each inmate. Five different types of questionnaires were designed: Treatment & Conditions, Remandee, Convicted, Condemned/Life and PTA.

All inmates were requested to complete the standard Treatment and Conditions questionnaire, and a second questionnaire, corresponding with their detention status. For e.g. a convicted prisoner would have to complete the Treatment and Conditions questionnaire as well as the Convicted questionnaire.

A total of 125 questionnaires were administered in the male section of each institution in the chosen sample. Of the total number of 125, the number of convicted, remandee and condemned questionnaires to be administered in each prison was calculated based on the population in that prison to reflect the proportion of remandee to convicted inmates in the general population. Statistics provided by the DOP were used to derive proportions.

Since PTA inmates were not held at every institution, similar to women prisoners, all PTA prisoners encountered during the prison visits were requested to complete the questionnaires and the number of PTA questionnaires conducted were in addition to the 125 administered in each prison in the sample. For example, in a men's prison that holds 195 convicted inmates, 14 condemned/life inmates, 5 PTA inmates and 926 remandees – the numbers of questionnaires conducted would be: 21 convicted, 2 condemned/life and 102 remandee questionnaires, constituting a total of 125, and 5 PTA questionnaires.

As highlighted earlier, the study aimed to administer questionnaires to all female prisoners that were included in the sample of prisoners. However, more than 150 female prisoners were transferred from Welikada Prison to Agunukolapelassa Closed Prison after the Commission's visit to Agunukolapelassa Closed Prison, and before the visit to Welikada Prison. As a result of this, almost 150 women were not accessed and were not included in the sample of female respondents.

To select people on a random sampling basis, the Prison Study Team visited every ward where prisoners of relevant detention statuses were held, informed its occupants about the Prison Study and invited inmates to volunteer to complete the questionnaires. Of those who volunteered, the required number was randomly chosen if the number of volunteers exceeded the number required. The prisons would provide the Commission with a large open space, most often the Buddhist temple, where questionnaires were administered in batches. It would take approximately 120 minutes to administer the questionnaire to one batch of prisoners. During prisoners' lunch hours – which is between 1230h and 1400h – when prisoners are expected to remain locked in their wards to enable officers to also have lunch, the Commission's work had to be halted in certain prisons.

Due to the sensitive and complex nature of the prison environment, the Commission had to be mindful of and devise strategies to deal with a number of security issues when administering questionnaires. For example, condemned prisoners and special prisoners were not allowed to be removed from their wards and mixed with other inmates, hence questionnaires had to be administered to those prisoners in their wards. Certain prisons, such as the Pallekele Closed Prison, are quite vast with wards situated far from each other, and the Prison Study Team had to ensure inmates from every ward had the opportunity to volunteer to complete a questionnaire, which meant it took longer to administer the questionnaires since long distances had to be covered to access each ward.

Questionnaires were available in English, Sinhala and Tamil, and where inmates could not read, write or see clearly, members of the Prison Study Team offered their assistance upon request. Prison officers were requested to remain at a distance and inmates were requested not to discuss and compare answers when completing the questionnaire. Some prisons held less than 125 inmates and hence a total of 125 questionnaires would not be completed in those prisons. Sometimes inmates would not be available to complete questionnaires, as they were away at court or hospital visit or unable to leave their duties at work parties, which prevented all inmates from having the opportunity to participate in completing questionnaires.

A total of 2881 questionnaires were administered at nineteen institutions. The number of female questionnaires totaled 547 from the ten institutions of the sample of prisons at which female prisoners were held. The total number of PTA questionnaires conducted was eighty-seven of which two were completed by female detainees.

Table 3.1 Total number of questionnaires administered

Total number of questionnaires	2881
Total number of questionnaires completed by male prisoners	2334
Total number of questionnaires completed by female prisoners	547

	Number of Questionnaires
Remandee	1185
PTA	85
Convicted ⁷	947
Condemned/Life prisoners	117
Total	2334
	Number of Questionnaires
Remandee	462
PTA	2
Convicted	58
Condemned/Life	25
Total	547

NB: The information gathered through questionnaires completed by female PTA prisoners was not evaluated as a separate category, as the Commission came across only two female PTA prisoners and this was not a statistically significant number of respondents from which to draw definitive conclusions.

4.3. Complaints

During the prison visits, complaint forms were distributed to inmates who wished to elaborate on the grievances they experienced in prison or inform the Commission about specific violations they had suffered. Information acquired through complaint forms was also analyzed for the purpose of this study as they provided in-depth information on inmates' concerns, in their own words. Some complaint forms were registered as complaints with the Human Rights Commission or forwarded to the relevant state institution for necessary action, with the consent of/upon the request of the inmate.

Table 3.2: Total number of complaints received by HRCSL

Type of request/complaint	Count
Misconduct of police officers i.e. threats, intimidations, framing, detention without producing before a Magistrate, forced to sign confessions, alleged planting of evidence	160
Requests for medical attention and complaints about healthcare in prison	150
Torture or cruel, inhuman or degrading treatment or punishment perpetrated in prison	116

⁷ As many work camps, where only convicted prisoners are held, had a population of less than 125 prisoners, it was not possible to complete the target 125 questionnaires. The consequence of this was that the resultant proportion of convicted to remandee prisoners that completed questionnaires is 47:53.

Requests for assistance with posting bail and complaints against stringent bail conditions	85
Assault allegedly perpetrated by police officers	80
Requests for legal assistance and legal aid	64
Complaints discussing overcrowding of prisons and associated issues	52
Inmates (local) requesting to contact their families	35
Requests for transfers to other institutions i.e. transfer to prisons closer to their hometown/family, transfer to prisons where the local language is the prisoner's language of proficiency	34
Issues related to pardons and commutations ⁸ of sentences	31
Grievances related to family visits in prison	19
Complaints about the delay in issuing Government Analyst Reports by the Government Analyst Department	17
Complaints regarding sentence calculation and remission within the prison	15
Complaints alleging judicial injustice	11
Issues related to conditions of work in open prison and work camps	11
Issues related to the court procedures i.e. language	10
Requests from foreign nationals regarding contact with their families	9
Issues about the home leave procedure	8
Requests from foreign nationals for embassies and consulates	7
Complaints against lawyers	4
Requests for providing disability assistance i.e. white cane, new prosthesis	3
Total number of complaints and requests received during the course of the study	921

4.4. Letters from death row prisoners

Due to the overwhelming number of condemned prisoners at the Welikada Prison who wished to speak with the Prison Study Team and relate their stories, the Commission requested condemned prisoners to write their story themselves, with the help of other prisoners where necessary, and submit it to the Commission. A total of 375 letters were received, written in English, Sinhala and Tamil, and the writers of these letters constitute 48% of the condemned (and condemned on appeal) prisoners in Welikada Prison. Information obtained from the letters was used in conjunction with data collected through questionnaires and interviews in analysis, and excerpts of letters have been quoted in the report. However, these are solely the views of condemned prisoners held at the Welikada Prison, as letters were not obtained from condemned inmates held at other prisons. Condemned inmates from Welikada Prison constitute 60% percent of the total population of condemned prisoners in the sample of prisoners- as at 5 April 2018.

⁸ Count does not include similar requests or complaints from the letters of the condemned prisoners where the same issue was raised.

4.5. Qualitative interviews

Qualitative interviews were used to capture in-depth narratives of prisoners' experiences from the time of arrest, through their time in the criminal justice system, and inside the prison.

Inmate interviews

Interviewees were selected based on the categories of prisoners identified above. Therefore, remandees, convicted, condemned and life prisoners were interviewed, and the longest serving prisoners, newest entrants, oldest and youngest prisoners were often chosen as interview candidates. Prisoners would also be selected as candidates if they had volunteered information in their questionnaires that illustrated unique or important aspects, or simply requested to be interviewed for the study.

Pre-prepared questions, which followed the general framework of the questionnaires, on standard prison conditions and treatment were used and all inmates were asked these questions, coupled with questions specific to their detention status or specialized category. The number of interviews conducted at each prison ranged from fifteen to forty, affected by time-constraints, type of institution and the size of the prison population. Interviews were conducted in English, Sinhala and Tamil as well as Urdu, Spanish and Italian in the case of some foreign inmates. Each interview lasted for a duration of forty-five minutes to two hours, with an average of one hour taken to complete each interview.

All interviewees were guaranteed confidentiality and required to consent to being recorded, after receiving all necessary information on the purpose of the study and the potential use of the recordings. Personnel from the prison administration were not present when the interviews were conducted. All interviews conducted were transcribed and translated to English for the purpose of data analysis.

Certain obstacles had to be overcome when conducting interviews due to the nature of the prison environment and the daily schedule of the prisoners. In the Welikada Prison, Sunday is the only day on which inmates are not required to work in their respective work parties, and therefore can be removed from their wards for interviews. Certain prisoners could not be allowed to mix with others. As prisoners are sent back into their wards after 1700h, officers of the Commission remained inside the prison premises in many of the prisons from 0900h to 1700h, without taking any breaks, in order to ensure an adequate number of interviews were conducted in a day.

A total of 352 interviews were conducted during this study, with 262 male interviews and 62 female interviews. 53% of the interviews were conducted in Sinhala, 37% in Tamil and 10% in English, Urdu, Spanish and Italian.

Table 3.3: Total number of inmate interviews conducted

Prisoner category	Number of male interviews	Number of female interviews	
Remandee	96	42	
Convicted	109	14	
PTA	50	2	
Condemned/Life prisoners	31	8	
Total	286	66	
Total		352	

Interviews with prison officers

The following officers from the prison administration in every institution were interviewed:

- Superintendent of Prisons
- Chief Jailor
- Jailer (Male and Female)
- Chief Rehabilitation Officer
- Rehabilitation Officer (Male and Female)
- Prison Guard (Male and Female)
- Chief Nursing Officer
- Medical Officers
- Counselling Officer

Some candidates for interviews were nominated by the Superintendent, while in other instances, since there was only one officer in that particular category, they would be interviewed by default. Selection was also based on availability and length of service. The numbers of interviews conducted are as follows:

Superintendent of Prisons: 19

Chief Jailor: 21

Rehabilitation Officers: 18

Prison Guards/Jailors: 29

Special Category/Teacher: 1

Medical Officers: 12

Counselling Officers: 7

A total of 102 interviews of prison staff were conducted.

Interviews with stakeholders

Selected members of government institutions and other independent and non-governmental organizations were also interviewed. The Ministry of Justice and Prison Reforms has the primary responsibility of overseeing the administration of prisons and formulating policies, while the DOP, headed by the Commissioner General of Prisons, implements policies set by the Ministry. The list of interviewees is as follows:

Entity	Date of Interview
Ministry of Justice and Prison Reforms	
Minister of Justice and Prison Reforms	6 July 2018
Secretary	4 July 2018
Additional Secretary - Legal	18 October 2018
Focal Point for the Department of Prisons	2 October 2018
Assistant Commissioner, Department of Community Based Corrections	26 September 2018
Department of Prisons	
Commissioner General of Prisons	September 2018 – January 2019
Former Commissioner General of Prisons	3 October 2018
Commissioner of Prison Administration, Intelligence and Security	April 2018 – November 2018
Commissioner of Prison Operations	27 August 2018
Commissioner of Prison Rehabilitation	29 August 2018
Commissioner of Prison Industries and Skills Development	19 September 2018
Officer Welfare Division	21 February 2019
Rehabilitation Division	21 February 2019
Statistical Officer	6 September 2018
Director, Centre for Research and Training in Corrections	23 August 2018
Escort Branch – Colombo Remand Prison	20 November 2018
Ministry of Health	
Director General of Health Services	2 October 2018
Director of Prison Healthcare	2 October 2018
Medical Officer in-Charge – Prison Hospital, Welikada	19 September 2018
The Attorney-General	6 July 2018
The President of the Bar Association of Sri Lanka	20 September 2018

Director, National Dangerous Drugs Control Board	20 September 2018
Chairperson, Legal Aid Commission	24 August 2018
Programme Coordinator, National STD/AIDS Control Programme	7 September 2018
United Nations Office for Drugs and Crime (UNODC)	21 September 2018
Public Health Inspector	1 April 2019
CSOs:	
Centre for Human Rights and Development	23 August 2018
Lawyers for Human Rights and Development	21 August 2018

5. Pilot study

A pilot study was conducted at Kalutara Remand Prison, an institution which was not part of the sample of institutions, in order to test the devised methodology and research methods. The results of the pilot study were used to further refine the interviews, questionnaires and overall prison visit procedure. Results obtained during the pilot study were not included in the data analysis.

6. Findings & recommendations

The findings and recommendations of this study aim to address the knowledge gap on and increase general understanding of the prison system, as well as highlight the shortcomings of the existing structural, legal and policy frameworks. It is hoped that the findings of this study will lead to the formulation and implementation of better practices and policies, which protect and promote the rights of prisoners and strengthen the correctional system, including through focusing on the issues faced by the officers working within the correctional system.

7. Human rights awareness programmes

During the course of this study a number of Superintendents and prison officers requested the Commission to conduct human rights awareness programmes to improve the officers' understanding of the Commission's mandate, the SMRs and fundamental rights enjoyed by prisoners. Accordingly, a series of human rights awareness programmes at each prison were initiated and to date have been held in three prisons. As part of this, the Commission has

also formulated information pamphlets for prison officers on the SMRs, prevention of torture, and the mandate, powers and functions of the Human Rights Commission.

8. Limitations of this study

1. The quality of research articles and documents used in the course of this study, and their relevance to the context of prisons in Sri Lanka.
2. The truthfulness and sincerity of answers provided by the inmates and officers.
3. The ability and competence of inmates to understand the questions.
4. The reluctance of inmates to disclose the truth due to fear of reprisals.
5. Time constraints which allowed only a selected number of institutions to be included in the sample of prisons and the time spent at each prison.
6. The lack of access to certain groups of inmates, e. g. convicted inmates working in external jobs outside the prison premises, and therefore being unavailable to participate in the quantitative and qualitative interviews, and inmates who were in court on the days of the Commission's visit.

9. Prison abbreviations

Prison name	Abbreviation
New Magazine Remand Prison	NMRP
Mahara Closed Prison	MCP
Negombo Remand Prison	NRP
Homagama Work Camp	HWC
Wariyapola Remand Prison	WRP
Pallekele Open Prison Camp	POPC
Pallekele Closed Prison	PCP
Kuruwita Remand Prison	KRP
Kuruwita Work Camp	KWC
Badulla Remand Prison	BRP
Batticaloa Remand Prison	BATRP
Galle Remand Prison	GRP
Weerawila Work Camp	WWC
Agunukolapelassa Closed Prison	ACP
Anuradhapura Open Prison Camp	AOPC
Anuradhapura Remand Prison	ARP
Jaffna Remand Prison	JRP
Colombo Remand Prison	CRP
Kegalle Remand Prison	KGRP
Welikada Prison	WCP

4. Analysis of the United Nations Standard Minimum Rules for the Treatment of Prisoners

The revised United Nations Standard Minimum Rules for the Treatment of Prisoners, the Nelson Mandela Rules (hereinafter referred to as SMRs), were adopted by the General Assembly in 2015. Preceding the adoption, the United Nations highlighted the global prison crisis, stating that the treatment of prisoners around the world was far from compliant with international guidelines. Further, it drew attention to the social cost of imprisonment, namely the health and well-being of prisoners and the impact on their families and society as whole, which undermines the ultimate purpose of imprisonment: protection of society from crime.

Significant characteristics of the global crisis were outlined, including the continued growth of the prison population, inadequate prison conditions, the impact of overcrowding, the severe costs of imprisonment and the fact that persons living in poverty are disproportionately incarcerated. The core purpose of imprisonment is challenged when prisons become a breeding ground for criminal activity or 'crime schools' rather than a correctional space. It was also opined that the shortcomings of the prison system are in part, a symptomatic effect of defects in the criminal justice process and/or policies. As a result, the revised version of the Mandela Rules also includes the requirement to ensure access to legal representation while in prison.

The SMRs, while allowing Member States to set policies practicable in the context of respective and applicable legal, socio-economic and geographical conditions, require that they are in line with the principles enshrined in the SMRs, which seek to enforce good practices in the treatment of prisoners around the world. The SMRs are based on certain foundational principles, which are reflected in the substantive content.

The following section contains an analysis of the SMRs, highlighting key cross-cutting themes reflected throughout this instrument, as well as obligations of the states. The chapter also includes a list of applicable national and international human rights standards that were used in this study to evaluate the treatment and conditions of prisoners held in correctional institutions in Sri Lanka.

1. Prohibition of torture, cruel, inhuman and degrading treatment and punishment

The very first rule of this instrument reinforces the universal absolute prohibition of torture, cruel, inhuman and degrading treatment and punishment, and calls upon Member States to respect the inherent dignity of prisoners and their value as human beings. The safety and security of prisoners is deemed paramount.

When discussing the guidelines for discipline and punishment, two key elements form the crux of the principle – necessity and proportionality, in addition to the absolute prohibition

on imposing punishments which amount to torture, cruel, inhuman and degrading treatment. The SMRs prohibit the use of arbitrary punishments and require an efficient chain of communication to ensure all punishments imposed are recorded, and informed to senior officers to ensure accountability. It requires physicians also to document and report to higher authorities when they become aware of any visible signs of torture.

Prolonged and indefinite solitary confinement is prohibited by the SMRs. The reiteration that ward conditions must meet acceptable standards of light, space and ventilation places emphasis on the prohibition of adverse living conditions in cells used for solitary confinement that will exacerbate the punishment. Medical personnel are required to monitor sanctioned prisoners and report on any physical or mental detriment caused as a result of solitary confinement.

2. Respecting inherent dignity as a human being

The SMRs consistently remind state parties of the need to respect the inherent dignity of prisoners as human beings. The training of prison officers should specifically include respect for the inherent dignity of prisoners and the prohibition of conduct that amounts to torture.

For instance, the prohibition of prisoners' outfits being degrading and the requirement to allow men to shave regularly 'to maintain a good appearance compatible with their self-respect', illustrate that respecting the prisoners' inherent dignity as human beings is a fundamental principle espoused by this instrument.

This principle is reiterated when discussing the use of mechanical restraints in SMR 47, which states that inherently degrading and painful restraints cannot be used, and SMR 50, which states that searches of prisoners must be conducted respecting the principle of legality, proportionality and necessity, and in a manner that is respectful of the inherent human dignity and privacy of the individual. SMR 91 states that the treatment of prisoners should 'encourage their self-respect and develop their sense of responsibility'. The requirement to treat prisoners with dignity is also applicable to the body of a deceased prisoner.

3. Accountability

The SMRs on the importance of an efficient information management system and the confidential yet logical and methodical storage of prisoners' personal details, demonstrate that accountability is a core theme of the SMRs. For instance, the Rules seek to assign accountability by requiring prisons to record upon admission visible injury marks and complaints of any ill-treatment inflicted on prisoners during arrest. Additionally, an initial medical screening by a medical officer is required to identify any psychological distress and/or signs of ill-treatment, which would enable injuries caused before entering the prison

to be distinguished from potential injuries after entry. Similarly, prison administrations are required to efficiently maintain the signed inventory of personal property of prisoners.

The need to maintain accountability was also highlighted in the Rules governing prison searches which require prison officers to ‘maintain appropriate records of search, in particular records of strip and body cavity searches and searches of cells, as well as the reasons for the searches, the identities of those who conducted them and search outcomes.’ Prison officers must also report the use of force, which is to be applied only as strictly necessary in certain circumstances, such as self-defence.

SMRs 83-85 govern the need for an external independent inspection to be facilitated periodically, whereby inspectors have unfettered access to the prison, without prior notice, and can speak to any prisoner confidentially, in order to ensure prisons are governed according to existing laws and policies, and to make recommendations for improvement.

4. Rehabilitation

The focus on the rehabilitation of the prisoner is reiterated at various points in the guidelines. The Rules of General Application in the SMRs reiterate that the deprivation of liberty is of itself detrimental to a prisoner’s physical and emotional well-being because it removes prisoners’ right to self-determination, and the prison system shall not therefore aggravate the suffering inherent in such a situation. To this effect, SMR 4 requires the correctional system to implement rehabilitative and vocational training programmes to facilitate the reintegration of prisoners into society, and the SMR stipulates the prison administration should seek to minimize any differences between a life of liberty and life in prison.

The SMRs state that prisoners should be held in facilities close to their homes in order to ensure ease of reintegration, thereby highlighting the importance of rehabilitation. A detailed set of rules stipulate the requirement to deliver a range of educational and vocational activities in prison, as well as cultural and religious programmes and work opportunities for prisoners, so that their time is spent in a useful manner and they receive remuneration.

SMR 88 obliges community agencies to assist prison officers, where possible, in the social rehabilitation of prisoners during incarceration, thereby enabling them to feel they are a continuing part of the community and are not excluded from it. This is followed by SMR 90, which describes the continued responsibility of society to provide aftercare upon the prisoner’s release, while SMRs 106 to 108 focus on facilitating the maintenance of the inmates’ family relationship while in prison. SMR 110 requires arrangements to be made to ensure persons receiving psychiatric treatment in prison continue to receive this treatment upon release.

5. Physical and mental well-being of prisoners

The general requirements to ensure adequate ventilation, sleeping space, access to natural and artificial light, bearing in mind climatic conditions, and access to fresh air are applicable to all prisoners, and aim to ensure that their living conditions do not adversely impact their well-being. Similarly, the SMRs require adequate access to toilet facilities as well as undisrupted access to water for hygiene and sanitation purposes. Prisoners with special needs must be catered to so as to enhance their access to prison services equitably.

Food provided for prisoners' meals must be of nutritional value and well-prepared, while drinking water must be made available at all times. This is followed by the requirement to allow at least one hour of exercise time for all prisoners, as well as the provision of sporting and recreational equipment for young and able prisoners. This is followed by the SMRs on health care systems in prison, ensuring that the physical and mental well-being of inmates are not ignored.

The SMRs state that young children should be allowed to remain with their mothers until a certain age, and that all necessary arrangements for the development and health of the child must be facilitated by the prison. The best interests of the child must be borne in mind when making the decision to separate a mother and child, thereby reiterating the need to protect the mental well-being of both.

The obligations of health-care professionals include inspecting the institutions and the preparation of food and conditions of the ward to ensure that the standards of hygiene and cleanliness are practiced at all times, as they directly contribute to the physical and mental well-being of prisoners.

6. Equal access to medical attention

The primary principle on access to medical attention requires that the provision of healthcare for prisoners mirrors the standards of healthcare available in the community, without discrimination. Prison healthcare is to be maintained by the general public health administration to ensure prisoners undergoing medical treatment outside prison have ready access to treatment during their sentence, paying particular attention to the provision of psychological and psychiatric attention. This requires the prison to have an interdisciplinary team of medical personnel as part of the in-house healthcare service.

Prenatal and postnatal care for pregnant women must be arranged and children should be born outside the prison. Up to date and confidential medical files must be maintained on each individual, which must be received by the respective health care facility to which a prisoner is transferred. Transfers for urgent medical attention and emergencies should be executed in a timely manner. Importantly, the SMRs declare clinical decisions can only be taken by respective healthcare professionals, and may not be overruled by members of the prison staff.

7. Prisoners with special needs/vulnerable groups

The Rules of General Application in the SMRs also require the minimum standards of treatment to be applied impartially and without discrimination on any grounds, and require prison administrations to take into account the needs of vulnerable groups of prisoners. Specific provisions to cater to the needs of vulnerable or special groups, such as foreign nationals, women and children, and persons with physical or mental impairment are highlighted in various rules.

The SMRs require information to be communicated to a prisoner in the language s/he understands, for instance, in orientation programmes and disciplinary hearings, bearing in mind the needs of foreign and ethnic minority prisoners.

Prisoners with mental illnesses are highlighted as a vulnerable group and their treatment is subject to the prohibition on detaining persons with severe mental disabilities, whose conditions would be exacerbated in prison. Psychiatric medical attention and counselling must be provided for all prisoners in need of treatment, and those who must necessarily be detained, are required to be provided specialized and supervised medical treatment. The use of solitary confinement to punish persons suffering mental and physical disabilities is prohibited.

Special rules for specific groups are highlighted in the document, indicating the requirement to accommodate the varying needs of different groups. Separate rules exist for unconvicted prisoners, who are to be presumed and treated as innocent, and not subject to the same restrictions as convicted prisoners. Access to legal representation must be facilitated and legal aid must be provided when they may not have the means to hire private lawyers.

8. Conclusion

The principles devised in this document set a minimum standard for state parties to adhere to in the treatment of prisoners, as they are based on the premise that prisoners deserve respect due to their inherent dignity and value as human beings. Prisoners are not to be treated as inferior or underserving of human rights protection by virtue of the offence with which they are charged. The general perception highlighted throughout the SMRs is that the loss of liberty and right to self-determination is sufficient punishment and therefore, should not be exacerbated by adverse living conditions and treatment. The principles reflect the values embodied in the Universal Declaration of Human Rights, which affirm ‘the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’.

As stated by Nelson Mandela ‘no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones’. State parties have the responsibility to promote social progress, tolerance and cohesion, bearing in mind that the disenfranchisement of one group of the population will inevitably result in the deterioration of the nation as a whole.

List of international and national legal instruments used to evaluate the treatment and conditions of prisoners:

- **UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)**

The SMRs form the conceptual basis of this study and the foundation of the methodology. This human rights instrument calls upon Member States to uphold the highest values in protecting the human rights of persons deprived of liberty. The rules cover the daily functions of prisons and provide guidelines to ensure that the administration of detention places is in accordance with international human rights standards. Member States are expected to incorporate these principles, which form the benchmark for holding detaining authorities accountable, into domestic legislation and policies.

- **UN core international human rights instruments**

This study used the following core UN treaties to assess the state of prisons in Sri Lanka:

1. The Convention of Elimination of All Forms of Discrimination Against Women.
2. The Convention on the Rights of the Child
3. The International Covenant on Civil and Political Rights
4. The International Covenant on Economic, Social and Cultural Rights

- **International human rights rules and guidelines**

1. United National Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules)

The Bangkok Rules outline the minimum standards to be followed in female detention centres and generally in the criminal justice with the aim to ensure that the specific needs of women in custody are addressed.

2. United Nations Standard Minimum Rules for the Administration of Juvenile Justice of 1985 (The Beijing Rules)

The Beijing Rules, and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty of 1990 highlight safeguards to be maintained by Member States to protect the rights of young persons in custody.

3. United Nations Principles and Guidelines for Access to Legal Aid in the Criminal System

These principles outline guidelines to be followed by the state to implement the widely recognized right to legal representation and legal aid for persons who cannot afford it, bearing in mind the important role played by access to legal representation in the enjoyment of an individual's right to a fair trial.

4. Revision of the UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (The Minnesota Protocol)

This is the revised supplementary manual to the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (1989), which outlines the safeguards and policies to be implemented to ensure the protection of life in custody, and the objective procedure to be followed when investigating unlawful deaths.

5. United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)

These measures promote the use of non-custodial measures as alternatives to imprisonment, as well as set minimum safeguards to ensure incarcerated persons receive fair treatment in prison. This instrument promotes greater community involvement in the rehabilitation and reintegration of offenders, while creating among offenders a sense of accountability and responsibility towards society. Member states are expected to develop non-custodial measures within their legal systems to provide alternate options to reduce the use of imprisonment, and to rationalize criminal justice policies according to human rights principles whilst upholding the requirements of social justice and rehabilitation of the offender.

6. UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

These principles focus on the protection of all persons under any form of detention or imprisonment. These guidelines state that persons in places of detention should be treated in a humane manner with respect to their inherent dignity. Likewise, arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law, and there should be no unlawful restriction upon or derogation from any human rights of such individuals.

7. Principles for the Protection of Persons with Mental Illnesses and the Improvement of Mental Healthcare

These guidelines require all persons, including prisoners, to have access to the best available mental health care, which should be a part of a Member State's health and social care system.

8. Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

These principles guide healthcare personnel (particularly physicians) responsible for medical care of prisoners and detainees as they have a duty to provide medical attention of the same quality and standard, as offered to persons outside prisons.

- National legislation**

Applicable national legislation formed the framework within which standards and conditions of prisons were analysed to recommend the implementation of progressive provisions that are not widely being practiced, and outline laws and provisions that require reform.

1. Prisons Ordinance No.16 of 1877

The Prisons Ordinance is the main national legislation governing the administration of prisons in Sri Lanka. Regulations and laws set out in this Ordinance have been incrementally amended since its inception, although most of the law is still intact since enactment.

2. Subsidiary Legislation under the Prison Ordinance of 1956

Enacted in 1956, these statutory rules supplement the provisions of the Prisons Ordinance. They include provisions on the duties of prison officers, such as the superintendent, jailor, overseer (now known as sergeant) and medical officers, as well as on the rules governing the labour of convicted prisoners, and prisoner needs such as food, bedding etc.

3. Departmental Standing Orders of 1956

The Departmental Standing Orders complement the Prisons Ordinance and Statutory Legislations and are utilized as a guide for prison officers in performing their duties.

4. Circulars

Circulars issued by the DOP were also examined during the course of the study. These documents relate to the daily functioning of the prison system and provide directions for both prison officers and prisoners. Circulars address issues ranging from the visitation rights of prisoners, salary increments of prison guards, and procedures in transferring prisoners to rehabilitation centres, such as Kandarkadu.

5. Penal Code No. 2 of 1883

The Penal Code defines criminal offences in Sri Lanka and stipulates their respective punishments.

6. Code of Criminal Procedure Act, No. 15 of 1979

The Criminal Procedure Code provides the legal procedure to be followed when prosecuting offenders under the Sri Lankan criminal justice system.

7. Civil Procedure Code Ordinance, No. 12 of 1985

This Ordinance contains all laws relating to the procedure of the civil courts in Sri Lanka.

8. Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979

This Act forms the basis of national security laws and therefore contains derogations from fundamental due process safeguards, including, detention without charge for up to eighteen months.

9. International Covenant on Civil and Political Rights Act No. 56 of 2007

The International Covenant on Civil and Political Rights Act No. 56 of 2007 is the law which Sri Lanka, as a state party to the International Covenant on Civil and Political Rights, has enacted to give effect to the International Covenant on Civil and Political Rights.

10. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act No. 24 of 1994.

The Convention Against Torture was ratified and introduced into domestic law through this statutory instrument, highlighting the absolute non-derogability of the right against torture.

11. Release of Remand Prisoners Act No. 8 of 1991

The Release of Remand Prisoners Act No. 8 of 1991 stipulates a series of practicable measures to reduce the population of pretrial detainees held in prison, and was used to analyse the current practice in relation to the remand procedure.

12. Bail Act No. 30 of 1997

The Bail Act No. 30 of 1997 outlines the conditions under which bail can be granted and was utilized to explore the causes of, and reasons for the large number of pre-trial detainees.

13. Prevention of Crimes Ordinance Act No. 2 of 1926

This statute outlines sentencing guidelines for reconvicted persons, the use of preventive detention and releasing convicted persons on license, and was amended via Act No. 29 of 2017. The Act was used to review the use of post-sentence non-custodial measures.

14. Probation of Offenders Act No. 42 of 1944

This Act relates to the release of offenders on probation and their supervision, and was utilized to understand options available in law for alternatives to incarceration.

15. Transfer of Offenders Act No. 5 of 1995

The Transfer of Offenders Act No. 5 of 1995 is the legal framework which allows for and sets out the process of repatriation of convicted foreign nationals to their country of citizenship.

16. Children and Young Persons Ordinance Act No. 47 of 1956

To understand the risks faced by young people in prison, the report referred to the Children and Young Persons Ordinance Act No. 47 of 1956, as it is the primary legislation for the supervision of juvenile offenders and establishment of juvenile courts.

17. Youthful Offenders (Training Schools) Ordinance No. 28 of 1939

This Ordinance was used to assess the functions and activities of institutions that house young offenders which are within the purview of the Department of Prisons.

18. Community Based Corrections Act No. 46 of 2009

This Act sets out the legal framework for the utilization of community-based corrections as an alternative to incarceration.

19. Drug Dependent Persons (Treatment and Rehabilitation) Act No. 54 of 2007

This Act sets out provisions for the mandatory treatment and rehabilitation of drug dependent persons by order of the court.

20. National Dangerous Drugs Control Board Act No. 11 of 1984

This Act, which established the National Dangerous Drugs Control Board, specifies the mandate of the Board to provide rehabilitation and treatment for drug offenders. These provisions were used to study existing options to treat drug addiction as a health and social issue rather than a criminal issue.

21. Poisons, Opium and Dangerous Drugs Ordinance, No. 17 of 1929

This Ordinance stipulates offences related to the sale and possession of poison, opium and other dangerous drugs. Provisions of the Bail Act are not applicable to Section 54 of this Act, which is an offence for which many remandees interviewed as part of the study were charged.

5. Introduction to the Prison System

1. The history of the DOP

The prison system in Sri Lanka was established in the 19th century by the British. As the initial step of formalizing the system in the country, the British enacted "An Ordinance for the better regulation of Prisons Act No. 18 of 1844", which also established WCP as the first prison in Sri Lanka. The establishment of WCP was followed by MCP in 1875 and Bogambara Prison in 1876. The Prisons Ordinance No.16 of 1877 (hereinafter referred to as PO) and the Subsidiary Legislation under the Prisons Ordinance i.e. Statutory Rules (hereinafter referred to as SRs) provide for the administration of prisons and prisoners. The Departmental Standing Orders of 1956 (hereinafter referred to as DSO) provided the administrative framework for the prison staff to perform their functions.

From 1918 to 1920 a system of classifying prisoners according to their age, gender and the frequency of conviction was instituted. The DOP functions with the stated objectives of custody, care and correction through rehabilitation. The DOP was established as a department, separate from the Police Department, on 16 July 1905 and is governed by the PO. It was within the purview of the Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs until May 2018, when it was placed within the purview of the Ministry of Justice and Prison Reforms (hereinafter referred to as MOJ).

2. Organizational hierarchy

The DOP is headed by the Commissioner General of Prisons (hereinafter referred to as CGP), while an Additional CGP is available to cover up the duties of the CGP. There are five Commissioners in charge of the divisions of Administration/Intelligence and Security, Human Resources, Supply, Operations, Industries and Skills Development and Rehabilitation.

3. Institutions

3.1. Closed prisons

There are four closed prisons⁹ under the DOP. Closed Prisons are prisons with a perimeter wall where prisoners are held under maximum security conditions. Closed prisons detain only convicted prisoners. However, WCP is the only closed prison, which exclusively detains convicted prisoners at present, because due to overcrowding the other closed prisons detain remandees as well.

⁹ Closed Prisons -Welikada, Mahara, Pallekele, Agunukolapellassa

3.2. Remand prisons

There are nineteen remand prisons in Sri Lanka.¹⁰ The remand prisons detain unconvicted prisoners while there are convicted prisoners also housed in these prisons to perform functions, such as clerical work in office branches, maintenance and the preparation of food.

3.3. Work camps

There are nine work camps¹¹ which are prisons without a perimeter wall, that detain short term convicted prisoners under minimum security conditions. Convicted prisoners serving short term sentences or the last few years of a long sentence are sent to work camps. Inmates at these camps are involved in work such as agriculture, manufacturing of cement blocks or bricks, carpentry, bakery etc.

3.4. Open prison camps

There are two open prison camps¹² in Sri Lanka which exclusively detain convicted prisoners serving short sentences or the last few years of a long sentence. These prisons do not have a perimeter wall and the inmates are detained under minimum security conditions.

3.5. Lock ups

There are twenty-three lock ups¹³ within the purview of the DOP. These are detention centres located near the Courts and temporarily detain prisoners with pending cases to be produced before the Court, as well as prisoners to be transferred to a prison following the court hearing. Lock ups were not included in the sample of institutions for this study as they are temporary institutions and do not have a significant role to play in the criminal justice and incarceration process beyond operating as transit points.

3.6. Youth Training Schools

A training school, or, as it was formerly known, a borstal, functions as a correctional institution for young male offenders between the ages of sixteen and twenty-two, where they are made to undergo educational and vocational training in an attempt to rehabilitate them.

¹⁰ Remand prisons - Colombo, Tangalle, Jaffna, Anuradhapura, Batticaloa, Badulla, Galle, Matara, Negombo, New Magazine, Kegalle, Trincomalee. Kalutara, Kuruwita, Boossa, Monaragala, Polonnaruwa, Wariyapola, Vavuniya

¹¹ Work camps- Wataraka, Meetirigala, Hangilipola, Weerawila, Pitabedda, Kuruwita, Wariyapola, Kandewatta, Thunkama, Ambepussa

¹² Open prison camps- Pallekele OPC, Anuradhapura OPC

¹³ Lock Ups- Ampara, Avissawella, Balangoda, Balapitiya, Elpitiya, Chilaw, Puttalam, Embilipitiya, Gampaha, Gampola, Hambanthota. Kalmunai, Kilinochchi, Kuliyapitiya, Kurunegala, Maho, Mannar, Matale, Mullaitivu, Hatton, Nuawara Eliya, Pandura, Point Pedro

4. Prison officers

Every prison is under the supervision and control of a Superintendent of the rank of Superintendent of Prisons (hereinafter referred to as SP) or Assistant Superintendent of Prisons (hereinafter referred to as ASP). The daily administration of the prison is undertaken by a Chief Jailor (hereinafter referred to as CJ) under the guidance and directions of the SP. There are jailors assigned with duties, such as receiving prisoners and supervising the visits of outsiders. There are sergeants and prison guards who are assigned a multitude of tasks, ranging from providing armed security to the prison in turrets and undertaking prisoner escorts (escorting prisoners to courts and other prisons), to clerical work.

5. Branches and divisions

5.1. Registration Clerk Branch

The Registration Clerk Branch (hereinafter referred to as RC Branch) is responsible for maintenance of the prisoners' files including the Warrants of Detention and the Warrants of Commitment. The personal information of prisoners will be recorded by the RC Branch upon admission to prison. The duties of this branch also include the maintenance of the records of the prisoners (known as prisoner dockets), compiling lists of prisoners eligible for special pardons, calculating the remission and determining the release date of the convicted prisoners, and producing prisoners in courts on the stipulated dates.

5.2. School Master Branch

The School Master Branch (hereinafter referred to as SM Branch) is the division in a prison responsible for the discipline of prisoners as well as the prison officers. The SM Branch receives complaints from prisoners against other prisoners and prison officers, and is tasked with conducting inquiries into such complaints. The SM branch is also responsible for censoring letters sent and received by prisoners. 'Location' is a sub-division within the purview of the SM, responsible for allocating wards/ cells to the prisoners, maintaining records of the number of prisoners in each ward/cell, and appointing the ward leaders/ 'kamara party' for each ward in prison from amongst the prisoners.

5.3. Morning Staff Keeper

The Morning Staff Keeper Branch (hereinafter referred to as MSK Branch) assigns duties to prison officers in various sections of the prison in accordance with the orders of the CJ. This branch calculates the annual and casual leave taken by prison officers, and provides the details to the accounts branch to formulate the monthly salary of prison officers including the over-time (OT) payments and other allowances.

5.4. Equipment Store Keeper /Stores

The Equipment Store Keeper/Stores (hereinafter referred to as ESK Branch) have the custody of the personal belongings of prisoners, which prisoners surrender to the prison

upon admission, and will be held in custody until the prisoner is released or transferred to another prison. The stores also maintain an inventory of equipment of the prison, except for weapons, which are stored in the armoury of the prison.

5.5. Diet Roll Keeper

The Diet Roll Keeper Branch (hereinafter referred to as DRK Branch) is responsible for assessing and purchasing the dry and fresh rations for the prison. The dry rations will be stocked for a period of fourteen days and the fresh rations are brought to the prison on a daily basis. Furthermore, the DRK Branch is responsible for ordering the necessary pharmaceuticals upon the recommendation of the Medical Officer assigned to the prison as and when the need arises. A rations record (Prison form No.48) is maintained by this branch to assess the quantities of rations required based on the total number of inmates in the prison on a given day. The types of diets provided by the prison via the DRK Branch includes the normal prisoner diet, diabetic diet, high protein diet, bread diet, red rice diet and the diet for foreign nationals.

5.6. Welfare Branch

The Welfare Branch consists of Rehabilitation Officers and sometimes Counselling Officers who perform a range of functions, including conducting the orientation session for new prisoners, facilitating communication between prisoners and families through letters, making necessary arrangements with regard to requests for provisions such as soap, the medical needs of prisoners, and organizing religious, educational, cultural and sports activities for prisoners. The Branch also maintains a library within prisons for prisoners. The Welfare Branch plays a key role in the Home Leave and License Board schemes by compiling and sending the required reports on prisoners to the headquarters of the DOP and the License Board.

5.7. Intelligence and Defence Unit

The Intelligence and Defence Unit (Bandha Police) established by the DOP via Circular 08/2010 came into operation on 23 January 2010 with the objective of strengthening the security of prisons, and preventing contraband from entering prisons. This Unit consisted of officers of the DOP who volunteered to join the Unit and were selected during the basic training. Thereafter, an evaluation and a confidential report was obtained from the Police Department and other law enforcement authorities on each candidate, following which candidates were selected for the Unit. These officers were provided further training. Their duties included searching prisoners and officers when they enter and leave the prison, conducting raids in prison, and gathering intelligence. This Unit was placed under the supervision of a Commissioner and a SP of Intelligence and Defence at the headquarters of the DOP. The officers of this Unit reported to the SP in charge of Intelligence and Defence, as well as the SP of the prison to which they were assigned.

The Unit conducted prison raids upon the request of the SP of the prison as well as Police /CID or based on intelligence gathered by the unit. The Unit was not required to inform the

SP of a prison about a raid in advance, but notified the SP as a courtesy when commencing the raid. The SP in charge of this unit had the power to assign officers from one prison to conduct raids in another prison. Any banned items that were confiscated during raids along with a list of the items so confiscated were given to the SP of the prison if the raid was conducted upon the request of the SP. The confiscated items and the list were given to the police/CID if the raid was requested by such authority, and a copy of the list was also given to the SP of the relevant prison. The cash seized during such raids was credited to the state account, and the drugs and phones handed over to the relevant police station through the SP of Intelligence and Defence Unit. The police conduct an inquiry and prosecute the prisoner if contraband, such as drugs, was found in the possession of such prisoner and the drugs were handed over to the National Dangerous Drugs Control Board (hereinafter referred to as NDDCB). This unit was disbanded on 26 July 2018 and normal prison officers were assigned to perform the duties previously performed by the Unit. The Special Task Force (hereinafter referred to as STF) of police was assigned to certain prisons, such as ACP, to perform the duties of Bandha Police officers. Eventually, the unit was reconstituted and is currently functioning in several prisons.

6. Conditions of detention and daily routine of prisoners

6.1. The living spaces

There are two types of areas for the accommodation of prisoners - wards and cells. A ward is a large hall where multiple prisoners are detained, and some prisoners mark their sleeping space on the floor with water cans or empty bottles. These marked spaces are known as 'borders' in prison parlance.

The second kind of space are cells which are designed for individual prisoners but currently house between three to eight prisoners in most prisons due to overcrowding. There are cells which are designated "special" and are used to detain individual prisoners who are thought to be high security prisoners, or whose lives maybe under threat, for example due to death threats from rival gangs. In some prisons, individual cells are used as punishment cells to detain inmates who commit disciplinary offences, while some prisons have separate punishment cells.

6.2. The general structure of a prison ward

Usually a normal ward has one entrance, while a ward with cells has individual iron doors for each cell and one iron gate at the entrance to the ward. Some wards have a TV placed in a common area of the ward, such as the corridor in between the cells of a ward with cells. The belongings of the prisoners are either kept in plastic bags on the floor of the ward close to the wall or hanged from the iron grill of the walls. There might be, on rare occasions, one or more ceiling fan/s or rotating fan/s in wards. The toilets and bathing areas are available in the wards, i.e. often at the end of the ward, but almost always not available in individual

cells. At night, most often, the individual cells in a ward, in addition to the ward door, are locked and opened again only in the morning.

6.3. Sanitary facilities

One or more toilet/s and a tank to fill water for bathing purposes are found towards the end of a ward. The conditions and the number of toilets may vary from one prison to another. In some prisons, tanks for bathing are built outside the wards and prisoners are not supposed to bathe in the bathrooms inside the ward. Water to these tanks is supplied at specified times of the day in most prisons, and detainees are expected to fill the tank during this time. The detainees of cells, who are locked inside at night and are not able to use the toilets in the wards, use buckets or polythene/plastic bags for sanitation purposes at night and empty/clean these after the morning unlock the following day.

6.4. Daily routine

In the morning the ward will be unlocked (morning unlock) and a count of the prisoners will be undertaken by prison officers at 0600h. After the morning unlock, the prisoners will be provided breakfast and the wards and cells will be locked again. The wards and cells will be unlocked again at 0930h/1000h and will remain unlocked until around 1230h/1300h when lunch is served. During this period when the wards and cells are unlocked, in most prisons, prisoners will be allowed to spend time outside, with the physical space within which they are able to freely move depending on the structure of each prison. The wards will be locked after serving lunch and unlocked again at 1400h and will remain open until 1700h when another count of the prisoners, known as the evening lock-up, will be taken by prison officers.

This general routine may be subjected to variations based on the category of the prisoners, and the individual conditions, including the availability of the number of prison officers at each prison. For instance, prisoners categorized as 'special prisoners', as well as condemned prisoners will be unlocked only for one hour for exercise, while young offenders (hereinafter referred to as YO) are also given a limited period of time outside the wards, often due to security reasons, i.e. to ensure they remain segregated from adult prisoners. The convicted prisoners usually go to work parties after morning unlock. The counts obtained during the morning unlock and the evening lock-up are conveyed to the headquarters of the DOP daily via phone.

7. Categories of prisoners

The two main categories of prisoners are convicted prisoners and remandees. The categorization of prisoners in the PO as 'civil' and 'criminal' is no longer in use. The convicted prisoners include those convicted for a certain number of months or years, prisoners with life sentences, and condemned prisoners. There are also convicted prisoners on appeal. Remandees detained on a Warrant of Detention are those who have

been remanded by a judge as they have not been given bail or their offence is non-bailable, and whose files have not been sent to the Attorney General (hereinafter referred to as AG) for determination whether to indict for an offence, or are awaiting the commencement of the trial or have ongoing trials.

7.1. Prisoners with special duties

- Ward Leader - A ward leader ("kamara party") is appointed from amongst the prisoners by prison officers, and is in charge of the ward. He or she is responsible for the maintenance of the ward, ensuring the prisoners in the ward follow prison rules, and assisting prison officers with day to day activities, such as finding prisoners who receive family visits and have to be sent to the visit room. They are also expected to report to officers about prisoners who break prison rules or engage in violent behaviour.
- Visit party – Visit party is a prisoner assigned with the special duty of informing prisoners of the visits they receive from family by announcing the prisoner number or the name of the prisoner who has a visitor. This often entails going to the relevant ward or if the ward is not known going to different wards to find the prisoner.
- Kitchen party - Kitchen party ("kussi party") are prisoners assigned to the kitchen of prisons and are involved in the preparation of meals and the distribution of food.
- Office party - These prisoners assist prison officers with duties in office branches, such as the RC and Welfare Branch.
- Work party - These are convicted prisoners assigned with work, in the industrial sections or cleaning and maintenance. Prisoners who work outside the perimeter wall or the boundary of the prison are known as 'out party'

6. Entrance and Exit Procedure

"I was scared on my first night here. Let's not talk about it please. I have made peace with it now. I have stopped crying now."

Convicted Female, PCP

1. Introduction

The entrance procedure consists of numerous steps, such as admission, body searches upon admission, recording assaults, registration, medical examination and the orientation provided to prisoners. Generally, prisoners are brought to prison in the evening, as transfers from courts are done only at the end of the day. Upon entry into prison, their detention documents will be checked and a basic registration is done. New entrants will also be inquired about any assault they experienced prior to admission to prison. Following this, their property will be taken from them for storage and they will be subjected to body searches. They will thereafter be assigned to the ward for new entrants where they will spend their first night in prison. The remainder of the admission and registration process, such being registered by the Record Clerk, being subjected to a medical examination, being assigned to work parties and given an orientation, will be undertaken only the following day. Each step of the aforementioned entrance process will be discussed in detail in this chapter.

2. Admission process

The SMRs contain the standard procedure to be followed in the process of admitting a person to a prison. SMR 7 provides that, 'No person shall be received in a prison without a valid commitment order,'¹⁴ the purpose of which is to ensure the detention is not unlawful or arbitrary and has been ordered by a lawful authority.

Local laws contain similar provisions with Section 82 of the SRs¹⁵ affirming that a jailor cannot receive any prisoner into prison 'without a legal warrant or a written authority from the SP.' Further, Section 91 of the SRs provides that the jailor 'shall not permit any person to remain for the night within the prison without the written order of the SP.'¹⁶ Section 95 of the PO specifies that a certified copy of the committal paper is sufficient *prima facie* evidence of a lawful custody for the purpose of admission of a person into a prison.¹⁷ Section 89 of the

¹⁴ UN General Assembly, *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* 17 December 2015, Resolution A/RES/70/175, r 7.

¹⁵ Subsidiary Legislation under the Prisons Ordinance 1956, s 82.

¹⁶ SRs 1956, s 91.

¹⁷ PO No.16 of 1877, s 95, 'A copy of the committal of any prisoner by a competent court, or a copy of the extract from the calendar relating to any prisoner who may have been convicted by the Supreme Court, shall, if such copy

DSO also provides that the gate keeper must enter the details of any authorized person who is being admitted into the prison, in a separate book.¹⁸ This is affirmed by Section 356 of the DSO.¹⁹ It is expressly stated that this rule is one to which no exception can be made.²⁰

The first step in the process of admission is checking the Warrant of Detention for Remandees and the Warrant of Commitment in the case of convicted prisoners. These documents, which are mandatory for the person to be admitted to prison, must contain information, such as the offender's identification details, and must have the Magistrate's signature and seal. While the Warrant of Commitment outlines the offence for which the person was sentenced, a Warrant of Detention does not mention the charge for which an inmate has been remanded. It is the duty of the Receiving Jailer to check if the information provided in these documents is correct. Section 156 (1) of the SRs²¹ provides that any irregularity in the said documents must be brought to the attention of the SP. If the information is correct, the person is admitted to prison and sent to the RC Branch for registration.

By law, the prison should not accept a prisoner with a committal paper that contains irregularities or inconsistencies. In practice however, the Commission was informed that if a person without a valid committal paper is sent to prison, the prison would directly submit the committal papers to the respective court for correction, or send the documents back to the relevant SP of the prison from which the inmate was sent to be submitted to court for correction. In the event of such an error or inconsistency in the admission documents, the prisoner will be accepted into prison and kept in prison for the night until the inconsistency is rectified the following day. The registrar of the relevant court may in writing require that the prisoner be detained until the rectified or amended detention order or the committal paper is sent to the prison. In such an instance, the person will spend a night in fiscal custody without proper committal papers.

The Commission observed "gate rooms" at the entrance of every prison visited, where inmates who go to and return from courts are housed for a short period, until the Receiving Jailer completes the admission procedure.²² It was observed that the size of the gate room at each prison varies, with many lacking ventilation and light. For instance, it was observed that

be certified by the Superintendent of any prison, be sufficient *prima facie* evidence for all purposes of the lawful custody of such prisoner. Provided, however, that it shall be lawful for a competent court to require the production of the original committal, where the court shall deem the same necessary.'

¹⁸ Department of Prison and Probationary Services, *Departmental Standing Orders* 1956, s 89.

¹⁹ DSO 1956, s 356, 'No prisoner will be admitted into prison until a warrant empowering the Jailer to keep him in custody has been received.'

²⁰ *ibid* s 28, 'it is the duty of the jailors to scrutinize all warrants and to satisfy themselves that they are on the face of them in accordance with the law.'

²¹ SRs 1956, s 156 (1), 'any omission or irregularity in the documents shall be brought to the attention of the Superintendent for orders.'

²² A Receiving Jailer is the jailor at the point of entrance to the prison who is required to scrutinize all warrants and ensure that they are in accordance with the law. SRs 1956, s 156(1) states that the Jailer or Deputy Jailer has to see that the necessary authority for detention of a prisoner is delivered with them. DSO 1956, s 29 provides that the Jailer appointed as 'Receiving Officer' is exempted from night visits.

the gate rooms at MCP and WCP were small with virtually no ventilation and unhygienic. An inmate describing the gate room at CRP said that even if the cell could hold only twenty people, they would put about thirty to forty people into it. He said, “you are trying to breathe, but you can’t.”

Following the admission process, a prisoner is taken to the Record Room or RC Branch for registration, where according to Section 357 of the DSO, the ‘Prisons 8’ and ‘Prisons 111’ forms are to be completed. Form ‘Prisons 8’ has to be completed for prisoners sent to prison via courts, i.e. both remandees and convicted, and form ‘Prisons 111’ has to be completed in respect of prisoners admitted on transfer from another prison.

Upon inquiry from the RC Branch at the WCP, it was found that in practice the ‘Prisons 8’ form is completed for all prisoners and officers were unaware of the ‘Prisons 111’ form. Instead, a document known as ‘memo’ is completed by the jailor of the prison from which the person is being transferred and sent to the jailor of the receiving prison. The ‘memo’ contains the names of the prisoners being transferred along with their personal files known as ‘prison dockets’. A copy of this memo is retained by the transferring prison.

The documents necessary for admission to the Wataraka Youth Training School²³, an institution that is within the purview of the DOP, are different to those required by prisons since it is governed by the provisions of the Youthful Offenders (Training Schools) Ordinance No. 28 of 1939 (hereinafter referred to as YOTO) dealing with YOs i.e. offenders between sixteen and twenty-two years of age. Section 4(1) of the same legislation provides that, in certain circumstances, the court may order a person to be detained at a training school for three years if the court finds that the person is a youthful person, and that it is suitable to train and discipline him in such a training school due to his criminal habits or tendencies or association with persons with bad character. When the court makes such an order, the warrant of commitment, which is set out in Schedule 2 of the same Ordinance, will be furnished and ‘signed by the court’.²⁴

Although Section 157²⁵ of the SRs requires every prisoner to be allowed to take a bath on admission, the impracticability of this section was brought to the Commission’s notice by the SP of KRP who stated that “the proper method is to check them from the gate and take them inside after allowing them to take a shower, but it is not practical”, since bathing facilities are usually found inside the prison premises or wards, and not at the entrance of the prison.

The DSO²⁶ provides that if prisoners are received into prison before 1400h they should be registered ‘immediately after their arrival’, and prisoners received after 1400h have to be registered no later than the following morning. Prisoners are not allocated a particular cell until the full admission process is completed, and will usually be kept in wards designated

²³ For a detailed discussion on the living conditions of the Wataraka Youth Training School, please refer to chapter Young Offenders.

²⁴ Youthful Offenders (Training Schools) Ordinance No. 28 of 1939, s 6.

²⁵ SRs 1956, s 157, ‘Every prisoner shall take a bath on reception.’

²⁶ DSO 1956, s 357.

for new entrants, which are found in most prisons. For example, in the WCP, the ward which holds the new inmates is the I-1 ward. In the event the new entrants ward is overcrowded, the person will be sent to a normal ward.

Circular No. 36/2014, issued on 19 August 2014, requires police officers to provide a confidential report on the person they produce in court, to the prison authorities upon the admission of the person to prison. The purpose of the report is to provide the DOP with information about the inmate's criminal record, if any, the nature of the offence, any attempted or actual escape from police custody, psychological disorders etc. This circular appears to be observed in the breach because the Commission was informed that such reports are usually not issued to prisons by the police stations.

Crime Circular 19/2014 (IG Circular 2508/2014) instructs all the Senior Deputy Inspector Generals, Deputy Inspector Generals (hereinafter referred to as DIG), Division in Charge, District in Charge, Inspectors of Police (hereinafter referred to as IP) and Officers in Charge (hereinafter referred to as OIC) to provide a confidential report to prisons when a person is remanded. In the circular, the Inspector General of Police (hereinafter referred to as IGP) reiterates the need to submit the report which should include prior offences and the character of the person, because the CGP has informed him that "due to lack of knowledge about a person's prior offences and history, which had hindered evaluating the security required for a prisoner [when escorting], there have been many escapes". The Crime Circular 19/2014 instructs all police stations to adhere to the guidelines of Gazette No 321 issued in 31 October 1984 and Circulars 700/87 issued in 16 September 1987 and 1570/2001 issued in 23 April 2001. The report prepared, as noted in the Gazette, is to be handed over to the prison in a confidential envelope.

Upon inquiry, the IGP informed the Commission, in a letter dated 12 February 2019, that the said circular (Crime Circular 19/2014 or IG Circular 2508/2014), "has been widely circulated to all police officers island wide" instructing them to submit a confidential report of the prisoner to the prison when the person is remanded. The IGP further states that the instructions in the said circular "have been carried out continuously and regularly by police stations island-wide".

The Commission was informed of instances of such reports being submitted by the police to prisons, even prior to the issuance of the circular in 2014. For instance, an officer from CRP RC stated that when he was stationed at ARP, he observed that this procedure was practiced by certain police stations, even before the circular was issued in 2014. He also pointed out that the practice is not adhered to consistently by all police stations in the country even after the circular was issued. The BRP RC highlighted this inconsistency and said that they do not receive such reports from police stations, except from the police stations belonging to the Walapane Magistrate Court, which consistently submit these reports to the prison. It was stated this could be attributed to the Magistrate of Walapane instructing the police stations to do so. The RC of WCP stated that although the Maligakanda Magistrate Court followed this practice in 2014 after the issuance of the said circular, it is no longer the case.

RC officers of all remand prisons and closed prisons, where remandees are detained, stated that these reports are very important. The primary reason for this is that, since the Warrant of Detention does not mention the charge for which the person has been remanded, prison authorities are reliant on the remandee to provide this information. In many cases, a remandee may not be aware of the offence for which they have been charged, or may not provide truthful information to the prison authorities. Prison authorities stated that the failure to have information on the background and history of the prisoner might lead to persons who are members of rival gangs being housed together, which could lead to conflict and violence and disruption of the maintenance of order in prison.²⁷ Furthermore, the history of a remandee impacts whether or not the prison is able to inform the relevant Magistrate Courts and Magistrates visiting the prisons. of any required action regarding a person's bail. For instance, if a prisoner is not known to have a criminal history etc., the prison could bring the case to the attention of the visiting Magistrate.

3. Notification of imprisonment to next of kin

SMR 68²⁸ states that every prisoner should have the right to inform his family immediately about his imprisonment, transfer to another prison or of any illness while in prison. The PO states that inmates are allowed to communicate with their relatives but there is no mention of being provided an opportunity to communicate on arrival at the prison.²⁹

With regard to the prison administration notifying the next of kin, it was brought to the Commission's notice that this is not done systematically, particularly in the case of remandees. It should be noted that it is the responsibility of the prison administration to notify the families of prisoners about their imprisonment as soon as possible following the admission of a prisoner. This is particularly important considering the psychological condition of a person at the time of imprisonment and the need to connect with family. Since none of the prisons, except WCP, offer telecommunication facilities for prisoners to speak to their families, inmates would not be able to call and notify their family members of the imprisonment themselves³⁰.

The fact the Commission was requested by numerous prisoners to inform their families that they were in prison, as they feared their families would assume they were missing, injured or dead, illustrates the delays endured by prisoners before their families are made aware of their imprisonment. Moreover, it was also observed that certain inmates, particularly

²⁷ For a detail discussion on the segregation of prisoners, please refer chapter Accommodation.

²⁸ SMR 2015, r 68, 'Every prisoner shall have the right and shall be given the ability and means, to inform immediately his/her family, or any other person designated as a contact person, about his/her imprisonment, about his/her transfer to another institution and about any serious illness or injury.'

²⁹ PO No.16 of 1877, s 71, 'Every Prisoner shall be allowed....to receive visits from, and to communicate with, his relations and friends and his legal adviser.'

³⁰ For a detailed discussion of communication methods available in prison, please refer chapter Contact with the Outside World.

remandees, would not have access to clothes or other necessities if their families or friends are unaware of their imprisonment and could not bring them these items. The Commission has been informed of instances of officers contacting an inmate's family on their behalf, but this is dependent on the good will of a prison officer.

Foreign nationals are the most disadvantaged in such circumstances; they stated they were often not able to inform their families, friends or respective diplomatic representatives about their imprisonment. As prisons in Sri Lanka do not provide IDD telecommunication facilities, prisoners, or prison officers on their behalf, cannot call the families of foreign detainees to inform them of the imprisonment. An Indian inmate at NRP said that she requested the officers to inform her family of her arrest but they refused to do so. A Lebanese inmate at CRP said, "I'm a foreigner, so no contact with family or nothing, and the worse thing, the biggest problem I face is the inability to have access to a phone". Similarly, a Pakistani inmate at NMRP stated the following:

"A: My family still doesn't know I am inside. They know I am in Sri Lanka but they don't know I am inside (prison).

Q: They don't know you're in prison?

A: No... but I did not tell. How to tell? No phone, no nothing no contact."

The prison officers stated that they contact the relevant consular representatives at the request of prisoners but there were instances when personnel from the embassy would not respond or visit the detainee. Most foreign inmates would however not be aware of this, and instead believed that the prison did not notify the embassies despite their requests.

At least thirteen foreign nationals requested the Commission to inform either their consular representative or their family members about their imprisonment.

4. Recording assault upon admission

SMR 7(d) requires the recording of any visible injuries and complaints about prior ill-treatment upon the admission of every prisoner. However, there is no national legislation specifying any procedure to be adhered in recording injuries sustained from assaults prior to admission. Despite the lack of national legal provision requiring the recording of injuries upon admission, prisons have a procedure in place to document injuries that a person might have sustained prior to being admitted to prison. This ensures that prison authorities are not held liable for injuries that were sustained by an inmate, prior to their admission to prison.

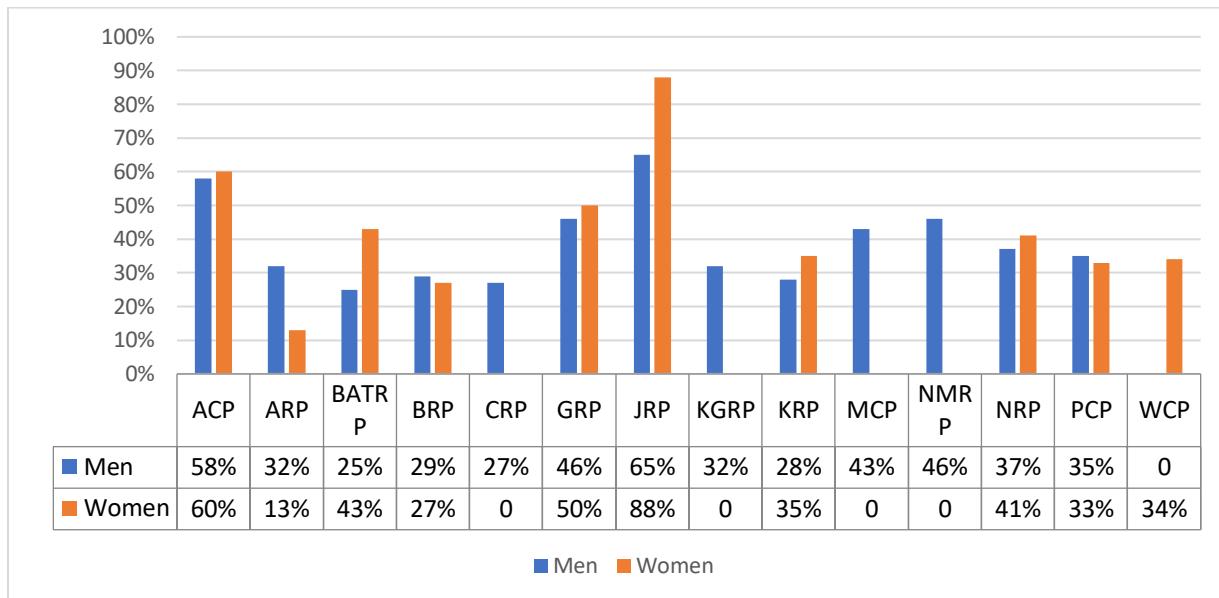
The Receiving Jailer inquires from the new entrant if s/he was assaulted by a police officer during the arrest process. If an inmate states that they have been subject to any form of violence, the Receiving Jailer will make a record of it in an assault book. The Commission observed three types of entries made at WCP by the Receiving Jailer that demonstrated the procedure followed by the prisons regarding reports of police assault.

- In the first entry, the officer notes that the prisoner reported he was assaulted by the police, that he wishes to take legal action against the relevant police authority and that he requires medical attention. The Receiving Jailer notes the injuries he can observe and mentions the injuries he cannot discern visibly. This is followed by remarks of the CJ and SP/ASP, who would order the inmate to be sent to National Hospital (hereinafter referred to as NH) in order for the police post to be notified by the NH and to inform in writing to the SP of the relevant police area where the alleged assault had occurred.
- In the second entry, the Receiving Jailer notes that the prisoner reports having been assaulted by the police but does not wish to take legal action, and requests medical treatment. The Receiving Jailer notes the visible injuries and the CJ and SP/APS follow up with an order to send the inmate to Prison Hospital (hereinafter referred to as PH) for medical treatment.
- In the third entry, the jailor writes, in a separate sheet of paper, which was attached to the assault book, that he had observed a large fresh injury on the face of a prisoner and inquires whether he was assaulted by the police. Since the inmate responded that he was not assaulted by the police, the Receiving Jailer writes the responses of the inmate in a question and answer format. The jailor also notes that the injury looks severe and recommends treatment, which is followed by the CJ and the SP/ASP ordering the inmate to be sent to the PH for treatment.

Moreover, it was noted at WCP that the entries made in the Assault Book distinguished between police beatings and non-police beatings. For example, closing entries made in the Assault Book at the end of the day by the Receiving Jailer state, "no police assault or other kinds of assaults reported by new entrants today". Similarly, in NRP, the Receiving Jailer maintains two separate books, one to enter police assault and the other to note other visible injuries sustained by the new entrant. In the case of non-police assaults, a brief statement is obtained from the new entrant summarizing the nature and place of assault and whether the inmate wishes to take an action against the person who assaulted him/her.

However, in prisons other than WCP, the Commission observed that the prison officer does not conduct a visual or physical examination of the person to ascertain and mark injuries if the inmate responds that he was not assaulted by the police. This was evident from the entries in the register maintained by the Receiving Jailer, named the "Assault Book". The procedure followed in other prisons to inform the CJ about the reported police assault and the resultant actions taken by the SP/ASP are similar to the procedure that was observed in WCP.

Graph 6.1 – Male and female remandees who were not queried about police assault upon admission to prison³¹



The quantitative data reveals that from the total male respondents, 49% of male respondents were asked whether they were assaulted by the police during admission to prison and 44% respondents were not queried by the prison authorities. From the total female sample, 52% stated they were queried about police assault and 38% were not. From the male remandee sample, 55% stated they were asked, while only 19% of the male PTA remandees stated they were queried about police assault. From the female remandee sample, 46% stated they were inquired about police assault.

It should be noted that in closed prisons, work camps and open prison camps, where convicted prisoners are processed for admission, this question may not be asked, since convicted prisoners would be transferred from a remand prison or from a closed prison, rather than from the custody of the police. For instance, it was noted this is rarely done in work camps such as HWC and WWC since work camps are prisons to which persons are admitted from police custody but are transferred from other prisons.³² However, the fact that an inmate is transferred from another prison, instead of police custody, does not preclude the fact that the inmate may have been assaulted prior to being transferred. In that regard, by not inquiring from new entrants to the camp if they have been assaulted, a time stamp is not placed on the injuries of the inmate to distinguish the injury marks that they were bearing before their admission to the new prison.

³¹ There are no female remandees in CRP, MCP, KGRP, NMRP do not house female remandees. WCP does not house male remandees. Note that all prisons used for across prisons comparison are remand prisons.

³² Prisons of Direct Admission are prisons which prisoners are directly admitted to from courts. Prisoners enter Work Camps after having been detained in another prison. It is a mere transfer from one prison to another.

The Commission was informed by SPs that in the event an inmate wished to complain about the assault or violence to which he was subject during arrest, the routine practice is that a letter would be submitted through the SP to the relevant Superintendent of Police of the police station area where the incident occurred. The standard letter would request an inquiry into the allegation and necessary action but there was no standard procedure with the procedure followed by prisons differing slightly. For instance, PCP refers such cases to the Assistant Superintendent of Police of the relevant police station while KRP refers them to the Senior Superintendent of the Ratnapura Police. However, in an interesting example, the SP of the BRP stated that they not only record assaults by the police but also inform the National Police Commission (hereinafter referred to as NPC) of such incidents. The SP of the BATRP stated that in addition to the general procedure, a report is sent to the Prison Headquarters for necessary action.

It was noted that many persons do not report violence to the prison authorities upon admission due to the fear of possible reprisals from the relevant police entity. Also, the Commission was not able to verify if, following the referral of such complaints by the prison authorities to the police, inquiries are in fact conducted, and if action is taken by the entity responsible to sanction the relevant police officer. Even if the person is produced before the Judicial Medical Officer (hereinafter referred to as JMO) by the prison, the Medico-Legal report would remain with the JMO unless the inmate wished to pursue remedies, such as actively pursue the police complaint, or file a fundamental rights petition or complain to the Commission, in which event the report would be called for by the relevant remedial institution. Thus, the effectiveness of the process remains unknown as there is no mechanism in place to follow up on the matter. Hence, not only is there need for a standard procedure for the recording of the allegation of assault and examination and referral of the prisoner to the JMO, but a mechanism to follow-up on the action taken by the police and the NPC with regard to such complaints is also required.

4.1. Role of medical personnel in identifying and reporting police torture

According to SMR 34³³, if a medical professional becomes aware of any signs of torture or inhuman, degrading punishment they should document and report such cases to a competent medical, administrative or judicial authority. This must be done in a manner that does not expose the prisoner to a foreseeable risk of harm.

The Commission found that prisoners who are newly admitted to a prison would be subjected to a medical examination. The Medical Officer (hereinafter referred to as MO) who is conducting the medical examination would inquire whether the inmate was subjected to any sort of assault while in police custody prior to admission into the prison. Visible injuries will be recorded by the MO and if the inmate is suffering from severe injuries which cannot be treated by the MO inside the prison, the inmate will be referred to the General Hospital (hereinafter referred to as GH). If there is a PH, the inmate will first be sent to the PH for treatment and then sent to the GH if s/he cannot be treated in the PH.

³³ SMR 2015, r 34.

The Commission noted that there were no instances of the prison authorities of their own volition, without the referral of another entity, referring an inmate to a JMO. It was observed that, in practice, the MOs inside the prison do not refer any inmate directly to the JMO but would refer any inmate with severe injuries to the GH as aforementioned.³⁴ Once the doctor in the GH informs the police post inside the GH about an alleged assault, the police will obtain details of the complaint from the prisoner, issue a Medico-Legal Examination (MLEF) form, following which the JMO will be requested by the hospital to examine the prisoner. Apart from such instances, inmates will be produced before a JMO when requested by court or the Commission.

Inmates may be referred to the GH in the event of serious injuries or to conduct tests that are not available at the prison facility. In one example, WCP sent an inmate with serious injuries who wished to take action against the alleged assault by the police to the NH so the police post could be notified of the assault. ARP refers inmates to the GH if

the injuries sustained are serious, and the MO at PCP stated that she would record the injuries and then refer the inmate to the Kandy Hospital to obtain X-rays, and thereafter to be produced to the JMO for necessary examination. Thus, it is evident that there is no uniform procedure with regards to presenting an inmate to the JMO, since it is not stipulated by any of the three primary prison legislation.

A MO at WCP stated that it would be convenient if a JMO is appointed/assigned to each prison, or at least at the larger prisons, thereby enabling the MOs to refer the prisoner to that JMO if there was evidence of ill-treatment. The JMO thus assigned to each prison could visit the prison if notification is made by the MO of a case of violence, or visit the prison regularly. This would also mean that the prisoner would not have to be sent outside prison, such as to the GH, in order for the police post to be notified and a JMO examination to be undertaken, which would require the authorization of the SP, arrangements to be made to be escorted etc. These procedures might prevent or delay the prisoner being produced before a JMO, especially given the severe staff shortages and limited transportation means available to the DOP.

It should also be noted that being produced before the JMO does not guarantee that a complaint about the assault will be made to the police, as there is no police post outside JMO offices, unlike in hospitals, where the police post is informed if a person with injuries is admitted and a police complaint is registered. Further, there is no provision mandating the JMO to direct the person to the nearest police station to lodge a complaint or for the JMO to formally inform the police or the Commission about the assault. This means that cases of police violence, which are liable to be prosecuted under the Convention Against Torture Act, No. 22 of 1994, will not even be reported. However, it was revealed during a visit to ACP that the JMO at the Hambantota Hospital had informed the police post at the hospital about an alleged case of violence by a prison officer, and subsequently a police officer had visited prison to obtain a statement from the victim about the said incident. Even though there is no provision which makes it mandatory for a JMO to inform the police post, this shows the key

³⁴ For a detailed discussion, please refer to chapter Discipline and Punishment.

role a JMO can play in identifying instances of torture and facilitating its prosecution, and more importantly in protecting prisoners from both police and prison officer violence.³⁵

5. Storage of personal property of inmates

According to SMR 67, all personal property of an inmate must be placed in safe custody upon admission to prison, an inventory of the property must be signed by the prisoner and steps should be taken to maintain them in good condition. The procedure to be followed on the discharge of the prisoner is found in SMR 67 (2), which provides that upon the release of the prisoner, all property should be returned to the prisoner unless it has been found necessary to destroy property, such as clothes. The prisoner shall sign a receipt for the articles and money returned to him.

In national legislation, Section 45 of the PO states that all personal effects of the inmate shall be kept in the safe custody of the jailor.³⁶ Further to this, Section 106 of the SRs imposes a duty on the jailor to 'see that a description of the clothing and property of every prisoner is entered in a book'. The purpose of the entry must be explained to the prisoner, which he would then sign. This requirement is reinforced by Section 93 of the DSO.³⁷ The procedure in place serves to safeguard not only the property of prisoners but also the staff from allegations that they may have misappropriated property belonging to prisoners. Section 106 of the SRs requires that once the description of the property is entered into a book it must be signed by both the jailor 'and some other prison officer'.

5.1. Storage of property in practice

The manner in which clothing and other property in the possession of the person at the time of admission is to be dealt with is provided in Sections 107, 108 and 109 of the SRs.³⁸

³⁵ For a detailed discussion, please refer chapter The Continuum of Violence.

³⁶ PO No.16 of 1877, s 45.

³⁷ DSO 1956, s 93, 'the Gate-Keeper shall enter in a Gate book a description of all prison private property belonging to prisoners taken into the prison. On the arrival at the prison... the Prison Gate- Keeper shall call upon [the prisoner] to declare his private property with reference to money, jewelry and other articles of value. It provides that the register must be signed by the prisoner and countersigned by the Fiscal (or Police) officer.'

- ³⁸ If the aggregate of the conviction is less than three years – it will be bundled and labeled with the prisoner's name and kept in store. (SRs 107)
- If the aggregate of the conviction exceeds three years – it will be sold at public auction and proceeds credited to public revenue. (SRs 108(1)). The clothing worn at the time release will be provided at government expense. Section 373 of the DSO provides regulations that must be observed in relation to such clothing given at the expense of the public.
- If the clothing brought by an unconvicted prisoner is unclaimed for a period of three months after his release it will be sold at public auction. (SRs 109A). This section provides that private property apart from clothes can be delivered to a friend or relative of a prisoner at the prison gate itself in the presence of the prisoner, the gatekeeper, the jailor and the recipient.

Section 106A of the SRs allows inmates to have in their possession articles such as dentures and spectacles³⁹ ‘if it is necessary in the interests of his health and general wellbeing’. The prisoner will be allowed to keep it in his/her possession as long as it is recommended by the MO and has the written approval of the SP.

In practice, it was observed that the property of prisoners is stored according to the category of the inmates i.e. remandee or convicted, and based on the value and type of property. It was noted that valuable goods, such as money or jewellery, are stored in separate safes. Cash is kept in the CJ’s safe, whilst other belongings, such as jewellery or gold, are kept in the storekeeper’s safe. In practice, any money in the possession of the remandee, if it is a small amount, will be left in the CJ’s safe. If a large amount of money is in the possession of the prisoner upon entrance to the prison, it will be deposited in the prison account, as observed at KRP. Money belonging to convicted prisoners is deposited in the prison account at the Bank of Ceylon. In KRP, for example, there is a ledger that lists all belongings inmates brought into prison, along with a detailed description of the items. For example, mobile phones are registered with the International Mobile Equipment Identity number (IMEI), while the credit card number is noted in the ‘*Pudgalika badu baraganime potha*’ [Personal belongings handover book]

At POPC, the civil clothes of the convicts are stored only for two years. Prisoners serving sentences longer than two years would be given the national dress to wear upon release. It was found that prisons such as BRP and BATRP have very efficient storage mechanisms. An easily retrievable, orderly and colour coded storage system was used at BRP where each parcel is numbered⁴⁰ and stored according to the numbers in separate drawers. The colour changes after every hundred packages. The system is organized in such a manner that even the number of the lottery ticket which was in the prisoner’s possession upon entrance is recorded. BRP SP stated that the clothes are ironed on the day before the inmate is released. BATRP has a similar colour coded system ensuring efficiency of storage and retrieval. At ACP, the possessions of the inmates, including National Identity Cards (hereinafter referred to as NICs), are wrapped and stored in drawers according to their year of birth. Possessions of inmates at the GRP are packaged according to the year and the number in the registration book: a number that is different to the prisoner numbers assigned to each person⁴¹. This system was seen at the KGRP as well. Thus, it could be observed that the method of storage of personal items used varies from prison to prison.

According to Section 427 of the DSO, the private property of all prisoners who are transferred will be dispatched with them. However, there have been issues reported in relation to the transfer of personal property when the prisoner is transferred to another prison. The Commission received complaints from two female foreign nationals that the money which they handed over upon admission to the prison was not sent along with them when they were transferred to another prison. Both of them were first imprisoned in NRP

³⁹ DSO 1956, s 505(a), also includes items such as hernia trusses, abdominal belts and crutches.

⁴⁰ The number provided for the parcel is not the same as the number given to the prisoner.

⁴¹ Packages are numbered according to the year and the number in the registration book. Ex: 266/18 - 266 signifies the number in the registration book and 18 signifies the year

and then transferred to WCP, and subsequently to ACP. One of the inmate's money was allegedly in the custody of the first prison, i.e. NRP, at the time the Commission received the complaint, while the other inmate's money was in the custody of WCP at that time. When inquired from the CJ of WCP, he mentioned that sometimes valuable property is not transferred when a prisoner is transferred due to the lack of facilities in ensuring the safety of such goods during the transfer process. He further mentioned that such property will be stored in the safe until the transferred prisoner retrieves his/her property personally or through a family member upon release.

5.2. Retrieval of stored property

The process of retrieving property across prisons was observed to be uniform to some extent. Prisoners may collect their own possessions when they are due to be discharged, or a letter has to be submitted to the SP or the SM Division by the family of the inmate, if they wish to request the items to be released on his behalf. The time period within which such a letter should be submitted is not stipulated. It would then be forwarded to the SP for approval after which it is sent to the storekeeper. The family member can collect the goods from the Receiving Jailor, who would obtain the signature of the family member in the presence of the storekeeper. Upon the death of an inmate certain prisons require a letter from the Grama Niladhari certifying the relationship of the person claiming the property to the prisoner in order to release the goods. In certain prisons the goods would only be released following an order made by the Magistrate.

In KRP for example, family members may collect the property of the inmate following a statement provided by both the prisoner and the individual collecting the goods. In the event of death of a prisoner, a family member who has been informed by letter by the RC Branch can collect the valuables. There can be a delay of up to a week, before the property is handed over to the family member if the family member's relationship to the inmate has to be verified. Valuables that are not collected will be auctioned after a year and the proceeds go to the Government Treasury.

At WCP, every three years a verification takes place during which a team, such as an audit team, would identify and approve the inmates' worn out clothes to be destroyed, since it is impractical to auction such clothes, which have been in storage for three years. Any unclaimed valuables, such as jewellery, would be sent to be auctioned. As observed at MCP, remandees are allowed to take their goods to court if they have information that bail would be granted on that day.

The multiple systems in place at different prisons point to the need for a standard system for storage and retrieval of the possessions of prisoners for the entire prison system. It should be noted that the abovementioned procedures were mentioned to the Commission by the prison officers of the respective prisons; the effectiveness and efficiency of the procedures to retrieve personal property remains unknown as former prisoners were not interviewed during this study. Therefore, problems encountered during the procedure of releasing prisoners have not been adequately uncovered.

6. Body searches

It is mandatory to conduct a body search of each and every prisoner upon admission. Relevant international standards include Article 10 of the International Covenant on Civil and Political Rights (hereinafter referred to as ICCPR), which reiterates the need to protect the dignity of persons deprived of liberty. Similarly, one of the basic principles laid out in the SMRs focuses on the dignity of prisoners, as specified in Rule 1. Accordingly, it requires ensuring the protection of all prisoners from torture and other cruel, inhuman or degrading treatment.⁴² SMR 50 specifies whether a search has to be conducted in the first place and how to conduct a search when required. It states that ‘searches shall be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual’, bearing in mind the principles of proportionality, legality and necessity.⁴³ Rules 50-52 and 60 govern the standards to be maintained when conducting body searches of prisoners and visitors as well as ward searches.

Since body searches carry the risk of being intrusive and violating the dignity and privacy of an inmate, they must be conducted in a respectful manner that does not cause psychological or physical harm. Accordingly, SMR 51 specifies that body searches must not be done to harass, intimidate or intrude upon a person’s privacy and records of any search including strip searches, body cavity searches and searches of cells must be properly maintained.⁴⁴ SMR 52(1) limits intrusive searches, including strip searches and body cavity searches, to be undertaken only if absolutely necessary, and encourages the prison administration to opt for appropriate alternatives to intrusive searches. Moreover, intrusive searches must be conducted in private by trained staff of the same sex as the prisoner. As per SMR 52(2) body cavity searches must only be conducted by qualified health-care professionals.

In national legislation, Section 42 of the PO states that all prisoners should be searched upon admission and any weapons or prohibited articles must be seized from the prisoner. Moreover, Section 33 of the PO grants the officer acting as the ‘gate-keeper’, or any other prison officer, the power to examine anything or any person coming in and out of prison. With regard to prohibited articles, Section 129 of the SRs makes it a duty of the gate-keeper to prevent the admission of such articles⁴⁵, and Section 88 of the DSO reaffirms this duty imposed on the gate-keeper. Section 97 specifies the duty to search prisoners received from

⁴² SMR 2015, r 1, ‘All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.’

⁴³ ibid r 50.

⁴⁴ ibid r 51, ‘Searches shall not be used to harass, intimidate or unnecessarily intrude upon a prisoner’s privacy. For the purpose of accountability, the prison administration shall keep appropriate records of searches, in particular strip and body cavity searches and searches of cells, as well as the reasons for the searches, the identities of those who conducted them and any results of the searches.’

⁴⁵ SRs 1956, ss 237, 238, ‘The following articles shall not be admitted into the prison, except by medical order or under the sanction of the Superintendent: - tobacco, betel, spirits, opium, bhang, poisons, or drugs of any sort”; “The following shall not be admitted under any circumstances: - Immoral or unauthorized books, cards, dice, or any instrument for gaming.,

court and on transfer. It is important to note that Section 47 of the DSO provides that in exercising the right to search any prisoner, ‘any unnecessary humiliation should be avoided’ and the search must be conducted in a seemly manner, with due regard to reasonable privacy.⁴⁶ Section 33⁴⁷ of PO and Section 814 of the DSO⁴⁸ state that female prisoners are to be searched by a female prison officer.

The gate keeper is required to record in the Gate Book all searches made, whether of prisoners, officers, private persons, or vehicles.⁴⁹ This requirement is consistent with the SMRs, which require prison officers to maintain records of the searches conducted, as well as the reasons for the searches, the identities of those who conducted them and any results of the searches” for the purposes of accountability.⁵⁰

6.1. The search procedure in practice

In practice, body searches are conducted in the following instances; upon admission of a prisoner to a prison for the first time, upon return from court sessions and from work outside the prison, and upon admission of a prisoner who is transferred from another prison. There are no national legislation, regulations or circulars or internationally utilized standards outlining the manner in which a search must be conducted, and the safeguards to be maintained when searching a prisoner. The Commission was not informed of prison officers being mandated to undergo any relevant training for this purpose.

Body searches were conducted by the “Prison Police” (banda police), which was partially disbanded in October 2018 and thereafter reconstituted, is a unit established within the DOP for the purpose of conducting body searches and also ward searches and searches during family visits. It was established through Department Circular 08/2010 issued on 03 February 2010 as the “Intelligence and Security Unit” and came into operation from 23 January 2010. According to the same Circular, the role of the officers of this unit is to thoroughly search every officer, visitor and prisoner entering prison to prevent anyone bringing vehicles and materials without authorization or illegal objects into the prison.

Circular No.06/2016 issued on 28 January 2016 by the Prison Headquarters to the SPs of WCP, Bogambara [PCP], MCP, CRP and NMRP, places the duty of conducting body searches upon the officers of the Intelligence and Security Unit to prevent the entry of contraband into prison premises. Hence, such officers were to be placed on duty at the main entrance to conduct body searches of officers and prisoners and to operate the body scanner and parcel scanner machines. The same circular vested the responsibility of guiding the team assigned to conduct body searches upon the SP and the CJ of the relevant prison. This Circular was amended through Circular No.14/2016, issued on 5 March 2016, which states that the SPs of prisons shall take steps to formulate a proper strategy to prevent the entry of contraband

⁴⁶ DSO 1956, s 47.

⁴⁷ PO No.16 of 1877, s 33.

⁴⁸ DSO 1956, s 814.

⁴⁹ ibid s 97.

⁵⁰ SMR 2015, r 51.

into prison by consulting the Intelligence and Security Unit as they are adequately trained in this regard. According to the interviews of prison staff, the then CGP reportedly issued verbal orders regarding the procedure to be followed when conducting body searches. As mentioned by prisoners, the usual procedure when conducting a body search is that the Prison Police would run their hand over the prisoner's chest to check if the pulse rate is increasing based on which if the officer suspects the prisoner of possessing contraband, the prisoner would be subjected to a thorough body search and a body cavity search if necessary.

According to inmates, there are many problems with the procedure followed when conducting a body search and the methods used in conducting a body search vary from prison to prison, due to the lack of a standardized procedure. It was observed that every prison has a separate room at the entrance for the purpose of conducting the body search. At times, prisoners are taken inside one by one to be searched but there are instances when the inmates have stated that a few or all prisoners are taken inside to be searched at the same time. Many stated they were asked to strip in front of other inmates to be checked, as expressed by a convicted male prisoner in KRP who mentioned that, "In those searches, they make us remove all clothes we are wearing". A remandee in ACP also stated they are instructed to strip in front of other prisoners to be searched when they return to the prison from court.

6.2. The use of body scanners

It was observed that certain prisons, such as PCP, MCP, NRP and CRP have body scanners, while others conduct manual body searches. Even prisons which have body scanners may not always use them due to a number of reasons. At PCP it was not being used due to technical defects, resulting in inmates still being subjected to manual body search. An inmate of PCP stated that:

"If they suspect us of bringing any contraband inside the prison, they can always use the scanner, which detects anything, but first they use some other ways to check. They check the rectum (we have been asked to remove our clothes and bend and show the rectum) I promise on my almighty that happens here. They could have used the scanner in the first place but they don't. There's a lot happening at that gate; we can't refuse (the orders to defecate) unless we want to get ourselves beaten or hung on the line by handcuffs. It's conducted by the 'Bandha Police' [Prison Police]."

During inspections at PCP, the Commission observed that only prisoners who were suspected of bringing contraband are scanned and sometimes nobody is scanned. The officers mentioned that usually about four people are scanned per day and the kind of contraband that is found includes heroin, mobile phones, cash and tobacco. They further mentioned that they maintain records of every prisoner who is searched by the machine as well as the contraband that is seized. The SP of PCP further informed the Commission that he has notified the Prison Headquarters regarding the defective body scanner.

The Commission observed in CRP that prisoners were checked using the body scanner only if the officers suspected the prisoner was carrying contraband. Moreover, the Commission

was informed by prison officers that the body scanner in CRP is used to check prisoners from WCP and NMRP who are suspected of carrying contraband who are sent to CRP to be checked by the body scanner. The officers reported that an inmate may thereafter be sent to the Welikada PH, where a medical practitioner would administer medication to assist in releasing any contraband lodged in the inmate's body cavity. Such prisoners are allegedly placed inside the cells found in the Welikada PH and not housed in wards.

6.3. Body cavity searches

Inmates allege that even when machines are used, they have to encounter various forms of inhumane and degrading treatment. For example, an inmate of MCP stated:

"I was sent through that machine three times consecutively. They ask to stretch my fingers, they place their hand on my chest, they ask me to squat, afterwards, now it isn't there, but if the machine couldn't detect they would stick their fingers in the rectum."

Complaints were received by the Commission about body searches especially with regard to officers searching the rectum of a prisoner; these complaints were mostly against the Prison Police in NMRP, PCP and ACP. Almost all complaints regarding body searches in those places were related to strip searches and body cavity searches. An inmate from NMRP has complained that:

"When we return from courts, at the place where searches are done near the prison gate, we feel very uncomfortable. During the search, the rectum is searched at which point I feel extremely embarrassed and uncomfortable. If we hesitate to show, we are beaten and they forcefully do what they want."

An inmate from PCP alleged that certain prison police officers use unhygienic methods in searching the rectum, whereby they insert pens and the same pen is often used to search inside the rectum of several prisoners. He stated:

"Have to face lot of trouble during the body search when entering prison after outside work [Work Party]. The prison police remove our clothes and even search the rectum in an unhygienic manner. Some officers even insert pens and search. The same pen is used for all."

When allegations that the Prison Police carried out body searches in a degrading manner, for instance that pens were inserted into the rectum in intrusive body cavity searches, were raised during a meeting⁵¹ with the SP of PCP, he stated that this no longer happens, and officers have been advised not to harm the dignity of an inmate during a body search.

Numerous complaints were received from ACP about invasive, painful and potentially medically harmful methods being used to conduct cavity searches, such as using pipes to invade body cavities. This process was alleged to include degrading treatment, such as asking

⁵¹ Meeting with Senarath Bandara, Superintendent, Pallekele Closed Prison (Human Rights Commission, Sri Lanka, 20 June 2018)

the person to bend, strike different poses and flashing a torch into the rectum. According to the officers in KRP, body and cavity searches of prisoners are done only when there is a reasonable suspicion the prisoner is carrying contraband. However, what constitutes reasonable suspicion was not specified and strip searches are mainly carried out on ‘pre-identified inmates who are known to bring contraband.’ There have been many complaints from the inmates in KRP regarding strip and body cavity searches due to the degrading ways adopted in conducting such searches. For instance, a convicted male prisoner in KRP mentioned to the Commission that:

“In those searches, they make us remove all clothes we are wearing. We normally wear clothes to cover our naked self. So, what happens normally is an illegal act not even according to DS or anything, but in general an illegal and inhuman act. They insert things such as pens and pencils in our anus.”

Contrary to what was mentioned by prisoners, when the Commission queried about body cavity searches during the meeting held at the Commission, the SP of KRP stated that he does not allow officers to do body cavity searches as it is not their job and that if a body cavity search is required, the inmate will be sent to the doctor. A similar response was given by a prison guard in CRP, who stated that they will first search a suspicious prisoner through the body scanner and if such person refuses to surrender the hidden goods, a body cavity search will be done by a doctor. However, the Commission did not observe qualified medical professionals conducting body cavity searches at these prisons, nor did prisoners mention it.

It was also mentioned to the Commission by the officers who were on duty at the scan room in MCP, that suspected prisoners will be kept under the watch of prisoners in the special ward. Prisoners in the special ward are allowed limited outside time and spend most of the day in their wards, which are kept locked during the day, and hence are tasked with keeping watch over prisoners suspected of hiding contraband until they pass the contraband out of the body. Officers further stated that body cavity searches will not be conducted without the consent of the suspect. A similar situation was observed in NMRP where the officers stated that the doctor would not conduct any body cavity search without the consent of the prisoner and that the prisoner will be held until he passes the contraband, if any. The officers at NMRP further stated that there have been times where the prisoners had to be given laxatives for this purpose.

The SP of KRP Ajith Basnayake stated to the Commission during a meeting held at the Commission⁵², that in order to avoid the incidence of human rights violations during searches and to carry out efficient searches, it is important to introduce sophisticated technology, including body scanners and parcel scanners. He further stated that it is not possible to change the existing methods of conducting body searches without equipping prisons with innovative means of conducting body searches.

⁵² Meeting with Ajith Basnayake, Superintendent, Kuruwita Remand Prison (Human Rights Commission, Sri Lanka, 2 July 2018)

The need to invest in high-tech solutions to conduct body searches was also highlighted by members of the DOP Officer Welfare Branch, who stated that degrading body searches have an impact on the prison officer as well:

“We must have technology for body searches. We make prisoners stand naked in front of us. You think we like to see naked men parade in front of us the entire day? They feel humiliated and get angry, we feel angrier when they get angry. It’s just wrong. There are all these high-tech solutions, why can’t we have them? When we make an elderly prisoner stand naked and bend over, and when there is a long line of prisoners waiting to be searched, you want the old man to hurry up. So, we end up yelling at them. Someone old like your father. This is humiliating and very degrading – not only for the prisoner, but also for the officer. That’s why I said it’s inhumane.”

6.4. Situation post-disbanding of the Bandha Police

When the Prison Police (Bandha Police) was disbanded in October 2018, the former Minister of Justice and Prison Reforms Thalatha Athukorala ordered the STF, a part of the Sri Lanka Police, to be deployed in certain prisons for the purpose of conducting body searches of prisoners and visitors to the prison. The agreement to deploy STF officers to conduct body searches was done through letters exchanged between the Ministry of Justice and Prison Reforms, the Ministry of Public Administration, Management and Law & Order, and the Police Headquarters.

Through a letter dated 20 August 2018, the Minister of Justice and Prison Reforms at the time requested the then Minister of Public Administration, Management and Law & Order to provide the assistance of the STF to WCP, CRP, NMRP as well as ACP, to mainly prevent the entry of drugs and other contraband into the said prisons. In the same letter the Minister of Justice and Prison Reforms has stated that such deployment of STF will only be required until a new Prison Police is established with proper training and under a specified legal framework. Further, a letter dated 22 October 2018, which was sent to the IGP by the Ministry of Public Administration, Management and Law & Order requesting to deploy STF officers to provide protection outside the said prisons, states that the decision to deploy STF to prevent the entry of drugs and contraband into WCP, CRP, NMRP and ACP was finalized during a discussion held on 06 September 2018 chaired by the Minister of Public Administration, Management and Law and Order. To date, the Commission has observed that the STF is stationed only at ACP.

The Commission has received numerous complaints from prisoners at ACP regarding the manner in which searches are being conducted by the STF, which the prisoners allege is inhumane and degrading. It was noted that the STF stationed at ACP only conduct body searches at the entrance, as they are not authorized to get involved in any matter arising inside the prison. The Commission further observed that at ACP the Prison Police, which was reportedly disbanded by the Minister in October 2018, was still seen to be functioning in tandem with the STF, as described by an inmate at ACP thus:

"Since they know me, they undressed me. Then asked me to move my penis forward and backward, then bend down and widen my buttocks and attempt to defecate. They asked me to defecate as hard as I can since what I was doing was not enough. I said I can't understand. At that time the prison police officer (stepped in and) hit my head."

When inquiries were made from the Prison Headquarters regarding the re-establishment of the Bandha Police, they were unable to provide any written document regarding its re-establishment.

7. First night in prison

When inmates were asked to describe their experience of the first night in prison the most dominant feeling expressed by inmates was fear. Inmates stated that they had a preconceived notion of what prison would be like which caused them to fear what they may have to experience. One inmate stated, "We never know what is waiting for us." Another stated as follows:

"I didn't know what kind of place it will be and what kind of people will be here. When I was outside, I used to hear people say how bad prisons are and how they torture prisoners. So, I was very worried."

Some inmates stated that fear even drove them to contemplate suicide, with an inmate stating that he had 'Kaduru'⁵³ seeds in his pocket, which he consumed on the way to prison requiring him to be immediately treated at GH.

The first night in prison was a different experience for inmates who had prior experience of being in prison. However, where condemned prisoners are concerned, even those who had spent time in prison on remand stated they felt scared, with some stating it led them to contemplate taking their own lives. One inmate said that his first night at WCP "was just terrifying, awful". Further, he explained that due to overcrowding inmates were required to sleep in a position which he described as "[packing] sardines".

It was found that certain special categories of inmates, such as those imprisoned under the PTA, felt more exposed or were more fearful than others imprisoned under the normal penal laws. One such female inmate stated that, "People look at me as [if I am] a terrorist." Foreign inmates also stated they felt frightened since, as they explained, it was scary to be imprisoned in a foreign country where one knows no-one.

Sadness was another predominant feeling expressed by prisoners, which they said was exacerbated by seeing so much sadness amongst the prisoners around them. "Everyone who comes in [to prison] comes crying," an inmate said. Reminiscing about time spent with family

⁵³ Goda-kaduru - *Strychnos nux vomica*- A type of seed which is extremely poisonous. Inmate could also be referring to another type of Kaduru seeds - Divi Kaduru - *Pagiantha dicotoma* - which is equally poisonous.

and friends is another cause for inmates to become sad. As an inmate explained, “I was living with my family and suddenly all changed when they put me in prison. I felt I was dead. I couldn’t feel myself.”

It was observed that inmates feared being subjected to sexual assault with an inmate from WCP saying, “There was another senior prisoner in the room. He gave me two pillows to sleep. He asked me to sleep beside him. While I was sleeping, he started touching me and I got scared. I kept crying.”

Another inmate from JRP described his first night in prison saying that they had to alternatively arrange themselves in a way that his head would be at another prisoner’s feet. He said that there was no room to even stand when he needed to pass urine. An inmate at the HWC compared prison to a slaughterhouse. “Imagine how we control a herd of cows using a baton – that’s how they do it,” were his words about his experience.

Inmates also described incidents of ragging that took place either at the hands of officers or other inmates. An inmate at the JRP explained how prisoners are given what is referred to as a welcome slap by an officer and three quarters of the inmates are hit three or four times using a guava stick. A female remandee at the JRP alleged that a female officer “slapped my face when I came here and hit my hand twice with a stick”. An inmate from KRP described ragging by other inmates of those sentenced for rape. According to this inmate, they have to sing a song or do twenty-five dips. If not, they would be beaten thrice.⁵⁴

The most common response of a large number of female prisoners when asked about their experience on their first night in prison was that they were extremely sad, scared and lonely and spent the entire night crying. The majority of female prisoners stated they were grieving about leaving their children at home. A female inmate at PCP informed the Commission that she is still scared as she was when she first came to prison, because she was worried about leaving her three-year-old child. On the other hand, a female remandee in NRP said that it was the thought of her family and children that enabled her to endure her time prison:

“That day I felt, I do not want this life. I felt like doing something when I was inside the police cell but because of my daughter and my son I tolerated it. I also told my husband that I felt like that.”

8. Recording of prisoner information by the Record Clerk

8.1. Creating the prisoner file

The morning after the admission to prison, a prisoner is taken to the RC Branch, which is responsible for maintaining the personal records of prisoners. SMR 6 stipulates that there should be a system of prisoner file management in every prison, either in the form of an electronic database or in a registration book. SMR 6 also requires the security of the records

⁵⁴ For a detailed discussion, please refer chapters The Continuum of Violence and Discipline and Punishment.

to be ensured by preventing unauthorized access or modification of any information and requires that all such information must only be made available to those who require access to such records as a professional responsibility⁵⁵. SMRs 7⁵⁶ and 8⁵⁷ specify the details required to be entered in the prisoner file.

Corresponding to international standards, in national legislation, Section 44(1) of the PO sets out the details of a prisoner that should be recorded.⁵⁸ Accordingly, the SP may require particulars of prisoners, such as photographs, fingerprints and distinctive marks to be noted.⁵⁹ Each prisoner would therefore have a personal file created in his or her name and is granted a number. Sub-section 2 of the same section makes it an offence against prison discipline if the prisoner fails to give or knowingly gives false answers. Use of the word 'may' in this provision denotes that it is not mandatory to photograph or obtain finger impressions of the prisoners upon admission.⁶⁰

Not obtaining photographs or not entering any distinguishing marks on the prisoner's body immediately upon admission could be detrimental in many ways because, if the prisoner suffers physical violence at the hands of an officer or an inmate during his first night, there would be no record to show that the prisoner entered the prison without any visible marks of injury. Thus, the injuries inflicted overnight may be falsely attributed to the police or another external party. Such photographs or visual marks noted upon admission of a prisoner are also used for the purpose of identification of a prisoner in case of an escape. Further, the requirement to maintain the confidentiality of such photographs, finger-print, foot-print or records is enshrined in Section 44 (3) of the PO,⁶¹ which provides that no photograph, finger-print, foot-print or record that is taken or kept shall be supplied or sent save to persons specified. Section 156 (2) of the SRs reaffirms it.

The Commission observed that the RC Branch of each prison maintains the records and files of all prisoners admitted to prison. It was observed that the Prison Form 8, which contains particulars of the prisoners admitted, is maintained for each and every prisoner and kept in individual prisoner files. Where family contact details are concerned, a prison officer at WCP stated that prisoners may provide this information but many are not inclined to give phone numbers and may only divulge the address. This is cause for concern because, as stated in the SMRs, the prison must notify the family member designated by the prisoner when he or she suffers an injury or illness and is transferred to a health institution or dies in custody⁶², a task that is made difficult when prisoners do not provide complete family contact details.

⁵⁵ SMR 2015, r 9.

⁵⁶ ibid r 7.

⁵⁷ ibid r 8.

⁵⁸ PO No.16 of 1877, s 44(1), 'Photographs, measurements, finger-prints and foot-prints of any criminal prisoner; and the name, age, height, weight, distinctive marks, and any other prescribed measurements and particulars, of any prisoner.'

⁵⁹ SRs 1956, s 156(2) reaffirms this provision.

⁶⁰ PO No.16 of 1877, s 44(2).

⁶¹ ibid s 44(3).

⁶² SMR 2015, r 69, 'In the event of a prisoner's death, the prison director shall at once inform the prisoner's next of kin or emergency contact. Individuals designated by a prisoner to receive his or her health information shall be

Whether the inmate has prior convictions is mentioned in Prison Form 8 when a prisoner is registered. The terms used to classify prior convictions are, C - for first conviction, R/C - for second conviction (reconvicted) and R/R/C for convicted more than twice. This information is self-administered, i.e. the prisoner provides the RC Branch with this information since there is no centralized database of the prisoners' details. As mentioned to the Commission by a prison officer of WCP, the accuracy of this information is questionable because prisoners may be not inclined to divulge that they have prior convictions, since first offenders (hereinafter referred to as FO) are usually held in WCP, while reconvicted offenders (hereinafter referred to as R/C) and recidivists (hereinafter referred to as R/R/C) are transferred to PCP and MCP respectively. Hence, prisoners might provide false answers to avoid being housed in certain prisons. This also calls into question the accuracy of the annual DOP Statistics, which mention how many first, second and recidivist offenders are in prison.

Prisoner files would further include the committal papers in case of a convicted prisoner, or the Warrant of Detention in case of a remandee. The judgments given by the relevant court in case of a convicted prisoner will also be included in a prisoner's file. Details about the date of admission as well as the date of release are also entered in the Prisoner's Record. A good practice that was observed at WCP is the maintenance by the RC Branch of a separate calendar, which records the release dates as well as the court dates of the prisoners according to the details recorded in Prison Form 8. Examples of the different types of file maintenance procedures found in prisons are as follows:

- At WCP, files are not maintained for prisoners convicted with a sentence of one month or less. Instead, only their warrant of commitment and Prison Form 8 is attached to the Prison's Form 8 book. This is problematic because it is susceptible to being misplaced and would be harder to locate, unlike a file.
- In ARP, it was found that separate files are not maintained for remand prisoners. Rather, only the Prison 8 Form and the detention order of every prisoner were stapled together and placed in files, which were categorized according to the Courts at which the prisoners have their cases.
- At WWC, if a prisoner is a long-term inmate his case reports, record of home leave, any courses which he followed, transfers from work parties and a character certificate by the Welfare Branch would be included in his file.
- YOs registered at Wataraka have a personal file each, which contains information such as their prisoner number, the date they were admitted, their release date, identification marks, offence, height, age etc., the Court order and Prison 113 form.

The Commission found that for long-term prisoners other than remandees, a separate 'Prisoner's Record book' issued as 'Prison Form 17' is maintained. The Prisoner's Record is issued by the DOP specifically for long-term prisoners but it is used to maintain records of all convicted and condemned prisoners as well. The Prisoner's Record Book (Prison Form 17) contains Prison Form 8. Apart from Prison Form 8, there are various other documents

notified by the director of the prisoner's serious illness, injury or transfer to a health institution. The explicit request of a prisoner not to have his or her spouse or nearest relative notified in the event of illness or injury shall be respected.'

maintained in the Record Book. These forms are titled; ‘Sentence Remission and Discharge Particulars’, ‘Discharge Date’, ‘Occurrences’⁶³, ‘Record of Employment in Prison’, ‘Record of Action Relating to Charitable Allowances, Assistance to Family and Aid on Discharge’⁶⁴, ‘Record of Application’, ‘Record of Medical Occurrences and Special Recommendations’⁶⁵, ‘Special Remarks’, ‘Record of Letters of Special Importance and Petitions’, ‘Record of Prison Offences and Punishments’, ‘Record of Visits’, ‘Transfers’ and ‘Prisoner Pay Sheet’.

Under ‘Special Remarks’ in the Prisoner’s Record Book, remarks relating to ‘mental peculiarities and physical disabilities’, ‘commendable or reprehensive conduct of special note’, ‘propensity to violence or escape’ and ‘any information of importance relating to the prisoner and his family that will be useful in regard to his treatment in prison’ will be entered. The record of visits for instance is used to find the patterns of the number of visits a prisoner receives while he is in prison. If the prisoner does not receive any visits for six months, the prison administration is obliged to inquire to find out whether such prisoner is not receiving family visits due to his family living far away from the prison. In such instances, action is taken to transfer the prisoner to the nearest prison to his family’s residence for two weeks generally every six months. The Commission noted a number of prisoners who had been transferred for this purpose⁶⁶.

According to Section 360⁶⁷ of the DSO, whenever a prisoner is received directly from court with a sentence of two years or more, Form Prisons 93⁶⁸ should be sent to the Magistrate who tried the case to fill Paragraph 3 and then to the Superintendent of Police in the District in which the crime was committed to fill Paragraph 4. Thereafter, the form must be returned to the SP of Prisons. The completed filled form must be then included in the prisoner’s record. However, when inquired from the RC Branch at WCP, the officers were unaware of the existence of such a form. The purpose of the form was observed to be the identification of criminal record history of the prisoner and to confirm whether the prisoner is a second time offender.

8.2. Transfer of prisoners

Section 39 of the DSO provides that the Jailor must maintain a ‘Prisoners’ Location Book’, which includes the registration number, location and the dates which the prisoner was removed to another part of the prison or transferred or discharged from prison.

⁶³ Reasons for transfer, serious accidents to prisoners etc., including reference to relevant papers are recorded in the form ‘Occurrences’

⁶⁴ Details about scholarships given to children of prisoners who have a low income, financial support provided to families of prisoners as well as support given to prisoners upon release by providing equipment to continue any skill acquired inside the prison are recorded in this form. For a detailed discussion, please refer chapter Rehabilitation of Prisoners.

⁶⁵ Medical transfers, clinic and/or hospital treatment recommendations regarding diet, labour, special medical issues and any other information of note are recorded in the form ‘Record of Medical Occurrences and Special Recommendations’.

⁶⁶ For a detailed discussion, please refer chapter Contact with the Outside World.

⁶⁷ DSO 1956, s 360.

⁶⁸ Information about the past convictions of the prisoner is mentioned in the Prison Form 93.

The DSO lays down certain provisions referring to the records of the prisoners in relation to transfers. Section 423 provides that the dispatching Jailer should check if all committals and related papers of the prisoners to be transferred are correct, and should seal it in an envelope to be delivered. The Receiving Jailer should check whether the seal has been tampered while in transit and whether all the papers mentioned in the memo are correct. However, it is questionable whether this procedure is followed as the Commission observed in ARP that the documents are not brought sealed in an envelope but rather are brought as a stack of papers and files and handed over to the Receiving Jailer. The lack of operational safeguards could potentially contribute to not only the inefficiency of the information management systems but also breaches of confidentiality.

Prisoners who are being transferred must not be registered in an intermediate prison unless they are detained in that prison for more than twenty-four hours. The date and hour of arrival and departure together with the prisoner's number should be entered in the Morning State, which is a minute made under the heading Occurrences as stated in the example given in Section 424, for example, "A 2742, Trincomalee for Welikada, arrived 1630h."

The names of all prisoners to be transferred must be entered in a book and placed before the MO prior to the transfer, preferably the day before transfer.⁶⁹ Adherence to this process was observed to be a difficulty in prisons like BATRP where there is no doctor on duty. Moreover, the prisoner's description and marks must be carefully compared with those contained in his papers before he is transferred.⁷⁰ The private property of prisoners who are being discharged will be dispatched with them. After such dispatch, column 8 in the Private Property Book should be left blank as it should only be completed after the final discharge of the prisoner.⁷¹ The Commission observed in WCP that a Receiving Jailer inquires from the prisoners that have been transferred from another prison to WCP, whether they are unwell or require medical treatment. It must be noted that this was not observed being done across prisons, nor by all Receiving Jailors at WCP.

8.3. Record and file management system

The Commission noted that, across most prisons visited, the record and file management system was archaic, not digitalized, not facilitating efficient and effective management of the prison and was open to severe breaches of confidentiality. For instance, the file management system at KGRP needs to be strengthened as locating files takes a long time and it was found that, although the dates of admission of the inmates are entered, the time of admission is not entered. During inspection of prisoner records at WCP, it was noted that they were very poorly maintained with most of the documents either faded, moth eaten or torn. Further, the lack of a centralized database makes verification of prisoner details difficult. For instance, most prisoners admitted that the prisons do not have their NICs, in which instances prison

⁶⁹ DSO 1956, s 425.

⁷⁰ ibid s 426.

⁷¹ ibid s 427.

officers have to rely on the details of the prisoner mentioned in the court order to verify the identity of the prisoner.

The Commission also came across prisons taking the initiative to formulate solutions to establish an efficient record and file management system. An example is the digitalized system at BATRP which was created by a prison officer in 2004. Although the prison stopped utilizing it at some point following its creation, utilization of the system resumed in 2015. The SP of BATRP at the time opined that installing a computer at the entrance itself would enable the inmates' registration to take place as soon as they are brought to prison. However, he also said that it is difficult to give effect to this due to the lack of officers who know how to use a computer. At WCP, the details obtained upon registration are entered into a computer database, which is not yet fully functional. During officer interviews at the WCP, it was revealed that the database is not yet fully operational mainly due to the lack of officers with the ability and knowledge to use the system. It was also observed that due to the shortcomings in the digital system, WCP maintains its prisoner records manually. In BRP, the Commission observed that it was easy to locate a prisoner as the prison has methodically arranged all prisoner files according to a colour scheme specified for different purposes.

There have been certain reported instances where the lack of a proper file management system affected prisoners. During a visit to the ACP, the Commission intervened in the matter of a remandee who alleged he was being detained illegally since he had already posted bail. This was a result of the unavailability of a centralized database in the RC branch because, since the inmate had multiple ongoing cases in different courts, the RC branch had to ensure there were no pending warrants of detention with regards to the inmate in question. This had to be confirmed by calling the various prisons in the localities of the courts, as well as the registrars of courts, in which cases were pending. These procedural delays would have resulted in the continued detention of a person who had posted bail and was eligible for release, which would constitute arbitrary detention. Such incidents demonstrate the need for a centralized database of information of all prisoners, which is also connected to the courts, so that administrative delays in relaying information from the courts to prison is minimised and inmates are not arbitrarily detained in prison.

Moreover, the absence of a centralized digital database system hampers the ability of Prison Headquarters to obtain the necessary information of prisoners for various purposes, such as when information regarding prisoners is requested by Ministries such as the Ministry of Rehabilitation and Prison Reforms.⁷² To overcome this problem the Prison Headquarters issued Circular No. 34/2014 dated 16 August 2014, requiring all prisons to submit all information of prisoners on a monthly basis to the DOP. Thus, all information of prisoners relating to a particular month must be sent to the K Branch of the Prison Headquarters, before the fifth day of the following month, according to the specified structure attached in the said Circular.

The approach taken in different prisons to uphold the confidentiality of prisoner records varies. During inspections, it was observed that in ARP only the six officers in the RC Branch

⁷² Currently the relevant ministry is the Ministry of Justice and Prison Reforms.

have access to prisoner records. However, at WCP it was noted that a large number of officers and prisoners who worked in the office had access to records. In the event of a security breach or unauthorized access, there would be no means to trace the persons responsible.

9. Medical examination upon admission to a prison

SMR 30 requires a medical examination to be conducted by a qualified physician or health care professional of all prisoners upon admission to prison, in order to ascertain their previous medical conditions and medical requirements. The elements a physician or other qualified health-care professional should take note of when examining a prisoner upon admission are specified in SMR 30.

SMR 26(1) requires that accurate, up-to-date and confidential individual medical files on all prisoners must be prepared and maintained by the health care service.⁷³ All prisoners must be given access to their medical files and every prisoner must be allowed to appoint a third party to access their medical file. All such files must be transferred to the receiving institution upon the transfer of the prisoner.⁷⁴

Domestic legislation also follows this standard: Section 43 of the PO requires every criminal prisoner⁷⁵ to be examined by the MO as soon as convenient after admission while Section 159 requires the medical examination to be conducted within twenty-four hours of admission. The MO must record the state of the prisoner's health, and any observations, which the MO thinks fit to record. This must be entered in a book that has to be kept with the Jailor. Additionally, the MO must personally examine all prisoners on the day of their arrival or the following morning, and where convicted prisoners are concerned, record in writing whether the prisoner is fit to do hard or light labour.⁷⁶⁷⁷ Section 161 of the SRs requires the MO to measure the weight of every convicted prisoner sentenced for three months or more upon admission of the prisoner. Prisoners received from any infected localities must be isolated until examined by the MO in case of the prevalence of any infectious or contagious disease.⁷⁸ Moreover, Section 106A (1) of the SRs grants the authority to the SP upon recommendation of the MO to allow a prisoner who is found to be wearing dentures or spectacles or any article of similar nature to use it in prison in the interest of his health and wellbeing.⁷⁹

⁷³ SMR 2015, r 26 (1).

⁷⁴ ibid r 26(2), 'Medical files shall be transferred to the health-care service of the receiving institution upon transfer of a prisoner and shall be subject to medical confidentiality.'

⁷⁵ As clarified by the Commissioner of Prisons (Administration/Intelligence and Security), prisoners who committed financial or maintenance offences were previously categorized as civil prisoners. This would be mentioned in the Warrant of Detention itself and domestic legislation specifies the difference in the treatment and privileges of civil prisoners. Hence, the Department of Prisons did not have the authority to categorize inmates as civil or criminal. This practice has however been discontinued by the Courts and all offenders are now treated as criminal prisoners.

⁷⁶ SRs 1956, s 57.

⁷⁷ For a detailed discussion, please refer chapter Prison Work.

⁷⁸ SRs 1956 s 158.

⁷⁹ ibid s 106A (1).

The adherence to these laws and rules varies from one prison to the other and there is no uniform method of medical examination that is followed at every prison. During inspections it was observed that, except in BATRP, prisoners in all other prisons are subjected to a medical examination upon admission. A medical examination upon admission was not done in BATRP at the time of the Commission's inspections since there was no designated doctor for the prison. However, during a follow up visit, the Commission was informed that two doctors have been assigned to treat prisoners in BATRP and that they visit the prison on weekdays, for one hour. If a prisoner is brought to BATRP during the weekend, the usual practice is to examine the prisoner the following Monday.

According to the quantitative data, 73% of female remandees and 64% of male remandees were provided medical assistance upon request, at the time of their admission. Among the male respondents, 50% in GRP, 50% in PCP and 47% in NMRP received medical assistance upon request, as opposed to 87% in KGRP and 77% in JRP. The lack of a medical examination of prisoners upon entrance, therefore, also prevents inmates from being able to receive medical attention, if they require it at the time of admission.

MOs of each prison follow different practices with regard to the medical examination process upon admission. During inspections it was observed that an individual medical file is maintained for each prisoner by the MO of the NRP to record the medical details of the prisoners upon admission to the prison. However, it cannot be concluded that this process is being followed in all other prisons, as it was only observed at the NRP. Furthermore, as the MO of NRP informed the Commission, all the details required by file, such as the medical investigations (page 4 of the File- photo 6.20), are not completed because the prisoner is only subject to a basic medical examination and not an extensive medical screening.

The MO at GRP stated that when prisoners are released on bail the morning after the day they were remanded and admitted to prison, they would not be subjected to a medical check-up due to the short duration spent in prison.

When questioned about the medical conditions for which the person is examined, such as pregnancy, elevated lipids/blood sugar, high blood pressure, mental health problems and traumatic brain injuries, 86% MOs interviewed stated that they test for mental health problems, 71% check for elevated lipids/blood sugar and 43% MOs interviewed stated that they check whether the prisoner is pregnant. The MOs of all prisons stated that they examine the blood pressure upon admission of a prisoner.

The details recorded during the initial medical check-up are now regulated according to the "Initial Health Screening Form for Inmates", which was introduced by the International Committee of Red Cross (hereinafter referred to as ICRC) as a Pilot Prison Health Project in MCP and CRP. The process, which is still in the pilot stage, aims to ensure that an initial health screening will be carried out by a doctor or a nurse within the first twenty-four hours of an inmate's arrival at the prison. The form helps identify acute healthcare needs, including illnesses, injuries, contagious diseases, severe mental health conditions and suicidal

tendencies. It also helps the health staff that conduct the screening to recommend proper action that corresponds to the identified health issue. The form allows three kinds of recommendations to be made to the prison administration:

- i. Referral to Prison Doctor/ Hospital (immediately);
- ii. Keep under observation in temporary placement until seen by the Prison Doctor as soon as possible; or
- iii. Regular admission/ complete medical consultation on a medical condition.

Reportedly, the DOP is planning to introduce this procedure to all prisons if the pilot programme is a success.

All prisoners must be examined by the MO prior to being removed to another prison,⁸⁰ which according to the then Commissioner of Prisons (Administration/ Intelligence and Security) does not happen in practice. If a transferred prisoner is sick, they are expected to inform the officers at the gate of the receiving prison, following which the jailor will inform the CJ and send the prisoner to the PH for treatment. Circular No. 28/2012 issued on 01 November 2011, requires a medical report to be issued before transferring a prisoner to an Open Prison Camp. The Commission was informed that the medical exam is not conducted when prisoners are transferred to an open camp after spending a short period of time in transit at WCP, because a medical examination of every prisoner is conducted upon admission. In other prisons, from which prisoners would be transferred to an open camp to serve the last few years of their sentence, the Commission was informed that prisoners are not subject to medical exams before they are transferred to an open camp.

Corresponding to SMR 26(2)⁸¹, Section 140 of the DSO places the responsibility on the MO to send the medical records of the prisoners being transferred to the MO of the receiving prison, 'thus avoiding any divided responsibility'. However, this requirement is found only in the SRs according to which the only requirement is to transfer the medical records of a prisoner who is transferred to another prison on medical grounds⁸² and not otherwise. The Commission observed that medical records not being transferred alongside a prisoner who is transferred has been an obstacle to the MO of the receiving prison in providing necessary treatment to transferred prisoners. This situation was evident at ACP where the MO stated that he is unable to treat certain prisoners who had been transferred to ACP from WCP as their medical records had not been sent to ACP.

⁸⁰ PO No.16 of 1877, s 46, 'All prisoners, previously to being removed to any other prison, shall be examined by medical officer.'

⁸¹ SMR 2015, r 26(2), 'Medical files shall be transferred to the health-care service of the receiving institution upon transfer of a prisoner and shall be subject to medical confidentiality.'

⁸² SRs 1956, s 68.

10. Work party assignment

After the above-mentioned procedures are completed, new inmates are presented to the SP, who then assigns a work party in the case of convicted inmates. Section 649 of the DSO bestows the power on the SP to assign prisoners to work parties.⁸³ Depending on the party assigned, the inmate is sent to the transfer branch to be transferred to the relevant work section.⁸⁴

11. Orientation upon admission

SMR 54⁸⁵ provides that upon admission every prisoner must be provided with written information, such as the prison law⁸⁶. The Rule further provides that the prison administration should prominently display summaries of information in common areas of the prison.

Section 9 of the SRs provides that one of the duties of the Commissioner is to provide a brief summary or abstract of general information to prisoners.⁸⁷ Moreover, copies of such abstracts in English, Sinhalese and Tamil, signed by the Commissioner, must be hung in conspicuous places to which prisoners have ready access. It is also stated in Section 93 of the same that it is the duty of the Jailer ‘to read to all prisoners on admission in their own language the abstract of rules relating to prisoners.’

It was noted that the Welfare Division of each prison organizes an orientation programme for new inmates with the content varying from prison to prison. According to Circular No. 628 dated 27 May 1974, issued by the Prison Headquarters, new entrants must be informed during the orientation programme of the manner in which inmates are expected to behave in prison and the manner in which they must adapt to prison life and adhere to the rules and regulations by which prisons are governed. Information regarding educational and sports facilities available in the prison, facilities available for religious worship, the opportunity to see visitors, and other programmes available for prisoners are also supposed to be provided

⁸³ DSO 1956, s 649.

⁸⁴ For a detailed discussion, please refer chapter Prison Work.

⁸⁵ SMR 2015, r 54, ‘Upon admission every prisoner shall be promptly provided with written information about

- (a) The prison law and applicable prison regulations
- (b) his/her rights, including authorized methods of seeking information, access to legal advice, including through legal aid schemes and procedures for making requests or complaints
- (c) his/her obligations including applicable disciplinary sanctions; and
- (d) all other matters necessary to enable the prisoner to adapt himself/herself to the life of the prison.’

⁸⁶ ibid r 55, ‘the information referred to in rule 54 shall be available in the most commonly used languages in accordance with the needs of the prison population. If a prisoner doesn’t understand any of those languages, interpretation assistance should be provided.’

⁸⁷ The information shall include a written summary of prison offences, punishments and rules relating to the classification, privileges, remission of sentence of prisoners and the complaint making mechanism. Copies of it are required to be displayed in corridors in all three languages.

during this session. In practice, the orientation conducted is oral and printed materials are not provided to prisoners.

During inspections the Commission found that the orientation programme at MCP consists of power point presentations and includes:

- An explanation of the daily schedule of an inmate
- Ward/cell opening and closing times
- Meal times
- Work hours
- The opportunities for religious worship, such as meditation programmes for Buddhists, Sunday Mass for Catholics, Islamic prayer sessions conducted by an Imam
- An explanation of the work carried out by the RC, Welfare, Rehabilitation, Discipline branches
- Information on the PH

Further, information about the system of Home Leave, the entitlements for convicted prisoners and remandees, and the internal grievance mechanism is also provided. As depicted in the pictures below, certain prisons contain notices at the entrance that outline rules and regulations to be followed by inmates in prisons, as well respective sanctions for any misdemeanours committed in prison.

At POPC and AOPC, no detailed orientation is conducted, which is reportedly due to the fact the prisoners who are admitted to the two camps are transferred from other prisons and not directly from courts, and thereby it is assumed they would already have participated in such a programme in another prison. However, this rationale does not rule out the necessity of an orientation programme as work camps adopt different policies to closed and remand prisons, and as indicated above, all institutions do not follow uniform processes and practices, which may differ based on the discretion of each SP.

An inmate at KRP stated that the officers at the orientation programme had informed prisoners of the consequences of prisoners trying to escape, i.e. that they would be shot or their hands or legs would be broken.

The digital database at WCP records whether or not a prisoner attended an orientation programme. The orientation programme, however, is conducted only in Sinhala, which would place non-Sinhala proficient inmates and foreign nationals, who arguably have a greater need for an orientation programme. Local and foreign inmates at NRP also stated that they were not provided any orientation and the only briefing they received was information provided by other inmates. An inmate from the Philippines, at CRP, stated that he was informed of prison rules by the kamara party. A Pakistani inmate in the same prison stated that he too was “informed of how to behave in the ward by a man who was shouting out instructions”.

It was mentioned to the Commission that counselling officers in prisons such as ACP, ARP, MCP and WWC identify prisoners who require counselling at the orientation programme, while discussing the needs and conditions of the prisoners. The counselling officers stated they introduce themselves at the programme and identify individuals who might require psychological support. The counselling officer at ARP said that he does group counselling sessions for newly admitted prisoners in order to "make them feel that they are well received". He further explained that he tries to mentally uplift them by saying that "anyone could be imprisoned" and explains "the legal and social factors, which led them to prison". The Commission also found that the NDDCB provides a counselling officer to certain prisons, including ARP, who separates people who use drugs and talk to them about the dangers of drug abuse.

During an interview held with the Commissioner of Prisons (Rehabilitation), he stated that the Prison Headquarters is planning to initiate a three- day orientation programme for first time offenders in every prison.

12. Exit procedure: discharge from prison

Section 47 (1) of the PO⁸⁸ states that the jailor is responsible for the discharge of prisoners on the correct date. The discharge date of each inmate is provided in their relevant dockets. The Prisons form furnished upon admission is cross checked to see if the details of the inmate to be released match the description on his form. Each prisoner entitled to release has to be, according to the PO, discharged from prison 'on the date on which he becomes entitled to release'.⁸⁹ Prisoners are generally released at noon after lunch.⁹⁰ If the release date is a holiday, such as a Sunday or the days provided by Section 169 of the SRs⁹¹ for the purposes of Section 47 (3) of the PO⁹², such as Christmas or Vesak day, the inmate is released on the previous date. The inmate would then collect his goods from storage.

Section 364 of the DSO provides that when a prisoner is discharged from prison, the SP of the prison which is discharging the prisoner must inform the SP of the prison of first admission i.e. the prison at which the prisoner was first admitted. The prisoner's sheet in the register of the latter will then be closed and an entry will be made in the 'Remarks' column as to the cause of discharge. As explained by the Commissioner of Prisons (Administrations/Intelligence and Security), the Prisoner's Sheet in practice is a minute sheet that will be attached to the docket of a prisoner. Moreover, the SP of the prison from which the prisoner is being discharged shall return the committal to the court that issued it giving the date of discharge on the rear of the form.⁹³

⁸⁸ PO No. 16 of 1877, s 47 (1).

⁸⁹ ibid s 47 (3).

⁹⁰ SRs 1956, s170, specifies that the Superintendent may authorize the inmate to be released at any earlier hour after the morning unlock. One exception is if the Commissioner approves an inmate may be released between the hours of lock-up and unlock.

⁹¹ ibid s 169.

⁹² PO No. 16 of 1877, s 47 (3).

⁹³ DSO 1956, s 366.

Section 373 of the DSO requires the SP to ensure that all prisoners are sent out of prison ‘decently and adequately clad’. It is the responsibility of the prison to provide clothing, under Section 108(2) of the SRs to a prisoner upon release, particularly to prisoners whose clothes have been disposed.⁹⁴ The clothes provided on release are specified under Schedule IV of the SRs. In practice, clothes are provided to convicted prisoners who have a sentence of three years or more upon their release. The clothes provided to the prisoners are commonly referred to as “liberty kit” by the prison officers.

The provision of an allowance to the inmate upon discharge from prison is provided for in the prison legislation. For instance, a railway warrant or bus fare may be provided by the SP since Section 47(4) of the PO⁹⁵ grants him the discretionary power to so provide. Section 171(1) of the SRs provide that if the journey from the prison to the place of residence of the prisoner is entirely by road, the prisoner will be provided with one day’s batta for the first ten miles and an additional day’s batta⁹⁶ for each additional fifteen miles⁹⁷. Section 171(2) provides that if railway facilities are available for any part of the journey the prisoner shall be given a railway warrant for a third-class ticket⁹⁸ from the station nearest to the prison to the station nearest to his home. It is required that he be paid a batta if the journey by train is more than six hours duration. Remandees acquitted or discharged are also entitled to a railway warrant.⁹⁹

In the case of prisoners who are domiciled in foreign countries, according to Section 174(2) of the SRs, if the SP considers a special allowance is necessary for the prisoner to reach his home, the SP reports the full circumstances of the case to the Commissioner of Prisons for necessary action. Section 377 of the DSO reinforces this provision.¹⁰⁰

In practice, every prison provides a railway warrant or bus fare to a released prisoner. Generally, inmates are picked up by relatives or may reside in the same area in which the prison is situated, an example being CRP whose inhabitants, according to the SP, are largely from Colombo. Prisoners domiciled in foreign countries are reportedly sent to the Foreign Nationals Holding Centre in Mirihana, run by the Department of Immigration and Emigration, by order of the court that sentenced the inmate to prison, since the Detention Centre will not accept an inmate without a court order. As mentioned by the Commissioner of Prisons (Administration/Intelligence and Security), the SP will usually inform the Court upon discharge because often the prisoner’s visa would have expired at the time of release. Following this, the Court will issue an order to send the prisoner to the aforementioned

⁹⁴ SRs 1956, s 108 (2).

⁹⁵ PO No. 16 of 1877, s 47(4), '[to provide the prisoner] with a railway warrant or with such amount of money necessary, or with both such warrant and such money, to enable [the inmate] to return home.'

⁹⁶ ‘Batta’ is a travel allowance.

⁹⁷ SRs 1956, s 171 (1).

⁹⁸ An exception to this section is that the Superintendent may issue a warrant for a second-class ticket to any convicted prisoner “to whose status in life prior to conviction a second-class ticket is more appropriate”.

⁹⁹ SRs 1956, s 171 (2).

¹⁰⁰ DSO 1956, s 377, “the travelling expenses of prisoners on discharge to their native places out of the Island may be paid, with the Commissioner’s prior approval, up to a maximum of Rs. 25.”

Detention Centre upon his/her release from prison until his/her deportation to the domicile country. At the same time, the SP usually informs the relevant embassy of the prisoner's nationality, which has to then take responsibility for the expenses of deporting the person.

13. General observations

The process of admission into each prison was observed to be uniform and consistent, although the Commission observed flaws in the implementation of the admission process.

With regard to recording whether the prisoner has been subjected to any form of assault prior to his/her admission to prison, it was observed that there is no mechanism in place to follow up on complaints made by prison authorities on behalf of prisoners about police assaults suffered pre-imprisonment to the police hierarchy. There is also no follow up mechanism in place to ascertain whether any action was taken by the police hierarchy or the NPC to make the perpetrators accountable. Further, the process of referring a prisoner subjected to violence to a JMO is not uniform in every prison. This may be owed to the fact that there is a lacuna in the law, which does not make it mandatory for MOs to refer prisoners to a JMO in instances where visible marks of injury are observable. Further, the Commission observed that in certain prisons the medical check-up upon admission, which is mandatory according to the law, was not being conducted due to the lack of facilities as well as lack of MOs in certain prisons.

Body searches of a prisoner upon admission to a prison are considered vital as a mechanism to prevent the entry of contraband into prison. Although there are restrictions set out in law with regard to body searches, it was observed that certain violations of privacy and dignity of prisoners take place while body searches are conducted. Unavailability of new technology in most of the prisons was observed to be the main reason officers engage in manual body searches. However, the available scanners in certain prisons were also observed to be dysfunctional due to technical issues.

Once a prisoner is admitted to prison, the Commission observed that certain prisoners have attempted suicide or have had suicidal instincts due to the pressure and sadness they felt inside the prison. The Commission further came across instances of violence to which prisoners were subjected on their first night in prison.

The Commission observed that most prisons have become accustomed to different methods of prisoner file documentation and file management. Although certain procedures set out by the law in admitting a prisoner to a prison have been met, the Commission observed certain loopholes and inefficiencies on the part of the relevant authorities in following such procedures. The records of every prisoner are maintained by the RC Branch of every prison, but the methods practiced in maintaining the files of every prisoner were observed to vary from prison to prison. The lack of an efficient and consistent method of maintaining prisoner records was found to be an obstacle in locating as well as monitoring prisoners. It was further observed that a digital centralized database to maintain prisoner records exists in certain

prisons but such systems have not been successful due to the lack of equipment as well as the lack of trained officers in IT.

The Commission noted shortcomings in the orientation programme, which has to be conducted upon admission. For instance, some local and foreign inmates stated they had not attended such a programme. It was also noted that the orientation programme is not conducted in all three languages, or even in Tamil, where necessary.

7. Accommodation

“We need to change this place that smells like death, that smells like a graveyard. We must change this.”

Remandee, CRP

1. Introduction

The state of the infrastructure of the detention facilities is an element that has an impact on the physical and mental wellbeing of prisoners during the period of imprisonment. The SMRs provide minimum standards to be followed with regard to the physical conditions of prisons and outlines the responsibilities of the State, not only to implement the minimum standards of living within prisons, but also to conduct and facilitate monitoring by MOs and Public Health Inspectors (hereinafter referred to as PHI) to ensure that the facilities continue to be of habitable state. At the onset, it must be highlighted that SMR 3 states imprisonment is afflictive ‘by the very fact of taking from these persons the right of self-determination by depriving them of their liberty and therefore the prison system shall not aggravate the suffering inherent in such a situation’. Furthermore, SMR 5 requires the prisons administration to seek to ‘minimize any differences between prison life and life at liberty that tend to lessen the respect due to prisoners’ dignity as human beings’. Both these factors must form the basis of assessing the physical conditions of detention facilities.

This chapter focuses mainly on two different aspects of accommodation facilities in prisons; namely, segregation of living areas of prisoners belonging to different categories and the conditions of the accommodation facilities.

2. Segregation

SMR 11¹⁰¹ stipulates that different categories of prisoners shall be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. SMR 93¹⁰² states that the purpose of classification shall be to separate those prisoners who, by reason of their criminal records or characters, are likely to exercise a bad influence, and hence to divide prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.

In national legislation, Sections 178 and 183 of the SRs describe the rules for the segregation of prisoners in the male and female sections of the prison, and Section 183 specifically requires that ‘known prostitutes’ shall be kept in a separate ward by themselves. Section 9 mandates the CGP to display, for the information of the prisoners, a summary of rules relating to the classification in conspicuous places in prisons. Section 39 of DSO states that it

¹⁰¹ SMR 2015, r 11.

¹⁰² ibid r 93.

is the responsibility of the jailor to open a book called 'Prisoners' Location Book', in which every prisoner's register number and where he is located will appear.

With these rules in mind, segregation between the following categories will be examined in this chapter:

- First time offenders and reoffenders;
- Men and women;
- Adults and young offenders;
- Criminal prisoners and civil prisoners¹⁰³;
- Convicted prisoners and unconvicted prisoners;
- Segregation of prisoners according to nature of the offence and their character;
- Prisoners who need special care and/or treatment (physically disabled/psychically ill, prisoners with mental health issues or illnesses /elderly); and
- Drug offenders from non-drug offenders

Additionally, there are two other types of segregation practiced in Sri Lankan prisons which will also be examined, namely, the segregation of those who are convicted or detained under the PTA, and the segregation of foreign nationals.

It should be noted that the Taskforce on Judicial and Legal Causes for Prison Overcrowding and Prison Reform' in a report dated 9 November 2016 (hereinafter referred to as the Task Force Report) recommended that a Sub-Committee be appointed by the Taskforce to identify the needs of the prison system in Sri Lanka, paying special attention to 'classification and risk-needs assessment. The Sub-Committee would be expected to provide for appropriate housing and treatment based on risk, needs and categories of prisoners, such as drug users and traffickers, violent offenders, youthful offenders, women and persons with specific medical and/or mental health needs, to name a few'.¹⁰⁴ However, to date, the Commission is not aware of the Sub-Committee being established.

¹⁰³ Interpretation Section (Section 104) of the Prisons Ordinance defines 'civil prisoners' and 'criminal prisoners':

104. 'Civil Prisoner' means -

(a) a judgment-debtor committed to prison under the Civil Procedure Code; or
(b) a person committed to prison under section 252 of the Code of Criminal Procedure Act, No. 15 of 1979, in default of payment of a fine imposed under that section of that Act; or
(c) a person ordered to be detained in prison under section 390 of the Code of Criminal Procedure Act, No. 15 of 1979; or
(d) a person committed to prison under section 422 (4) of the Code of Criminal Procedure Act, No 15 of 1979.; or
(e) a person committed to prison for contempt of court, not being a person sentenced -
(i) to rigorous imprisonment for contempt of court;
(ii) to simple or rigorous imprisonment as for a contempt of court under section 449 (1) of the Code of Criminal Procedure Act, No. 15 of 1979; or
(f) a person committed to prison by order of a civil court under any provision of written law which does not authorize a sentence of rigorous imprisonment to be imposed.
'Criminal Prisoner' means any prisoner other than a civil prisoner.

¹⁰⁴ 'First Report of the Taskforce on Judicial and Legal Causes for Prison Overcrowding and Prison Reform' issued on 09 November 2016.

It was noted that the segregation standards mandated by SMRs and domestic legislation are not strictly being adhered to by the prison administrations, as will be discussed at length in the relevant subsections below. One of the main reasons that segregation is not always possible is due to the severe lack of space, as described by the ASP in charge of industries at WCP who stated:

“We don’t have enough space to segregate these people. We need more buildings, more officers. Then we can identify and segregate prisoners according to their personality traits. I’m sure we can even reduce a lot of crimes outside, by doing that.”

Reportedly, a contributing factor that prevents segregation is the reported allocation of wards with better facilities to persons in positions of power within society, or those who are known to the officers, or have provided financial inducements, resulting in other wards becoming highly congested.

2.1. Process of assigning accommodation

It was noted during staff interviews and prison inspections undertaken by the Commission, that it is the SP or the CJ of the institution, sometimes with the help of the officers of the SM Branch and the Location Branch, that decides on the allocation of wards.

Overall, the allocation of wards did not appear to be done by the SP or the CJ alone, even though they made the final decision, as many factors would have to be taken into account and different officers are knowledgeable on different factors. For example, in WCP, factors such as age, the number of on-going cases of a prisoner (to check whether a prisoner qualifies to be categorized as ‘special’), sentence period, disabilities, a prisoner’s social standing etc. are reportedly considered. Generally, the allocation of wards/cells appeared to be the result of a consultative process.

2.2. Men and women

SMR 81¹⁰⁵ contains the standard regarding the segregation of men and women. The national provision on the segregation of men and women is outlined in Section 177 of the SRs, which states that male prisoners shall be rigorously separated from female prisoners. Section 102

¹⁰⁵ SMR 2015, r 81 (1), In a prison for both men and women, the part of the prison set aside for women shall be under the authority of a responsible woman staff member who shall have the custody of the keys of all that part of the prison.

2. No male staff member shall enter the part of the prison set aside for women unless accompanied by a woman staff member.

3. Women prisoners shall be attended and supervised only by women staff members. This does not, however, preclude male staff members, particularly doctors and teachers, from carrying out their professional duties in prisons or parts of prisons set aside for women.

of the DSO sets out the process to be followed to ensure the security of women prisoners during night time.¹⁰⁶

It was observed during the inspection of every prison in the study sample, that male and female wards are strictly separated as mandated above. Except for BRP, JRP and PCP, where it was observed that female wards were inside the main prison building, i.e. to enter the female wing, one must enter through the main prison entrance, all other prisons which housed female inmates had separate female wings with entrances outside the main prison building.¹⁰⁷ In some instances the female officer-in-charge or in her absence, a senior female officer inside the female section had custody of the key to the female section (ex. GRP, WCP) and in others, the gate was locked from the inside and the key was kept at the male section and would have to be brought and given to a female officer through a small opening, who would open the main gate from inside (ex. KRP, BRP).

2.3. Convicted prisoners and remand prisoners

SMR 112 (1) stipulates that untried prisoners shall be kept separate from convicted prisoners. SMR 113 states that untried prisoners shall sleep singly in separate rooms, taking into account different local customs in respect of the climate.

In the national legal framework, Section 178(b) of the SRs states that prisoners on remand shall be kept, so far as the arrangements of the prison permit, separate from all other classes of prisoners. Section 196 of SRs provides for unconvicted prisoners to be placed in exclusive occupation of a room or cell better equipped than an ordinary cell or ward with the permission of the SP, on the payment of a fee fixed by the SP if ‘the status and condition of such prisoner warrant the provision of such accommodation’.¹⁰⁸ This is applicable to civil prisoners too. In addition to being discriminatory, this provision can create space for corruption, as it allows the SP to charge any fee he wishes without any monitoring or limitation. The Commission has observed such exclusive accommodation facilities, though it was unclear whether it was provided as per this provision or not. For example, in CRP the Commission observed that M2 ward, which housed five remandees who were said to have requested special protection from the court, had a wall fan, a ceiling fan, a TV they bought themselves, a normal bulb and red dim bulb, a makeshift mattress (a sick prisoner was said to sleep there), a makeshift water filter and neat racks with a lot of fruits. The washing area was tiled with a shower, a toilet and allegedly uninterrupted water supply.¹⁰⁹

MCP, PCP, ACP which are, in principle, supposed to house only convicted prisoners had at least some remandees, while remand prisons housed at least some convicted prisoners to

¹⁰⁶ The Gate Keeper shall keep in his possession the female ward gate key from the locking up of the prison in the evening until the unlock in the morning. On no account is he to hand over the key to any officer under the rank of Deputy Jailor. In small prisons, this key should be kept at night in a small locked box at the gate, the Jailor to retain possession of the box key and not the Gate-Keeper.

¹⁰⁷ NRP, KRP, BATRP, ACP, GRP, ARP and WCP.

¹⁰⁸ SR 1956, s 196.

¹⁰⁹ For a detailed discussion, please refer chapter Inmate – Officer Relationship.

undertake prison work and those who have been sent via special court orders¹¹⁰, in particular due to special security considerations,¹¹¹ or as a result of SP discussions¹¹². Except in WCP (male section), open prisons and work camps, where there are no remandees, both remandees and convicted prisoners were found in all the other prisons visited. Generally, measures had been taken in these prisons to segregate the sleeping spaces of convicted and remandees by allocating separate wards for the two categories. However, every prison contained at least one special ward where both convicted and remandees are housed together, for example, the PH, PTA ward, YO ward and special prisoners ward, whilst certain prisons also contained normal wards where both remandees and convicted prisoners would be found.

However, this limited measure taken by separating convicted and remandee sleeping facilities is rendered ineffective because in most prisons, the common spaces are accessible to both the convicted and remand prisoners, and hence they will inevitably come into contact with each other. This is the case in all prisons visited except in ACP, where most of the remandees are held inside their rather large ward sections. However, even at ACP the two categories come into contact with each other in other places, such as the PH. Convicted female prisoners and female remandees were separated in some prisons (ex. KRP, ACP, GRP, ARP).

2.4. Adults and young offenders

SMR 11(d) states that young prisoners shall be kept separate from adults, while SMR 112 (2) stipulates the segregation of young untried prisoners who, in principle, should be detained in separate institutions.

In the national legislation, Section 178 (d) of the SRs states that prisoners under twenty-two years of age shall be kept, so far as the arrangements of the prison permit, separate from all other classes of prisoners, as does Section 420 of the DSO,¹¹³ which gives particular importance to segregation in respect of YOs in each prison where they are housed. Section 401(4) of the DSO states that YOs who are given a sentence of more than one month are to be transferred to and located in the YO section of WCP, which does not necessarily take place in practice at present because YOs are sent to youth correctional centres and nearly all

¹¹⁰ A court may issue a special order regarding a prisoner/remandee for security purposes. For example, known organized crime leaders are often issued court orders to be housed in a prison closest to the court in order to avoid attempts on the life of the prisoner or escape attempts during escorts.

¹¹¹ Remandees/prisoners who have had attempts on their lives in prison or during escorts to courts/other prisons, are often housed at prisons where officers assigned for special security duty can be assigned. For example, the Commission came across one such condemned prisoner in BRP who had been housed there with a special General's order for protection.

¹¹² SP Discussions are roundtable discussions conducted at the DOP with all SPs, Commissioners and the CGP and other relevant parties in order to discuss issues and plans. In these discussions, SPs can raise issues related to inmates such as disciplinary issues or security issues and request other SPs to accept the prisoner and house him/her in their prison. The Commission came across many convicted prisoners who had been housed in remand prisons, due to such SP discussions.

¹¹³ DSO 1956, s 420.

remand prisons have a separate YO Section.¹¹⁴ It must be pointed out that the national law as it currently stands allows persons under the age of eighteen to be housed with adults, because different laws contain varied definitions of a young/youthful offender, with persons aged up to twenty-two years being considered YOs. There is hence no distinction made between those over eighteen years of age and those under eighteen years. This is contrary to both the Sri Lankan Charter on the Rights of the Child, formulated by the government of Sri Lanka in 1992 after ratifying the Convention on the Rights of the Child (hereinafter referred to as the CRC), as well as the CRC, according to which persons under the age of eighteen are considered to be children.

The Commission in its analysis and observations highlights the inconsistencies in the segregation of young persons and adults that was observed across prisons. The findings illustrate that the practice of segregation requires a fundamental shift in law and policy to ensure that persons under the age of eighteen are not held with persons above the age of eighteen.

The Commission observed that, at HWC, the prison was divided into two sections, and adult prisoners and YOs were housed separately and no interaction was observed between the two categories except when the adult cleaning party inmates come to clean the premises of *Suneetha Pasala*, the school for YOs, the kitchen party inmates come to serve food to YOs or when YOs are taken to the PH, which is in the adult section, to receive medical attention. In many prisons there is a separate ward for youth, often with restricted outside hours, in order to minimise interaction between adults and the YOs. It was observed that, in practice, some prisons segregated those under eighteen while others segregated those under twenty-two years, as per the legislation. Hence, in some prisons, such as ACP, sixteen-year olds were housed with persons up to twenty-two years of age, while at prisons such as BRP remandees under the age of eighteen were housed separately. This is set out in the Table number 7.1.

Table 7.1 – Segregating young prisoners

Institution	Arrangement regarding segregation of young prisoners
ACP	YI Ward for YOs. The youngest at the time of the Commission's visit was sixteen years old.
AOPC	No separate ward for young convicted inmates was observed.
ARP	C Special YO Ward housed convicted inmates and remandees under the age of twenty. The youngest detainee at the time of the Commission's visit was seventeen years old. The Commission observed that there was a twenty-one-year-old in B2 Ward and a twenty-two-year-old in H1 Ward along with other adult inmates.
BATRP	E (YO) Ward housed inmates under the age of eighteen.
BRP	F Ward housed convicted inmates and remandees under twenty-two years. The youngest inmate at the time of the visit was eighteen years old. F Ward also housed a remandee older than twenty-two who had

¹¹⁴ For a detailed discussion on the YOs within the prison system, please refer chapter Young Offenders.

	psychological developmental issues. Inmates under the age of seventeen were kept in the C Ward.
CRP	O Ward housed YOs. The eldest inmate was twenty and the youngest was sixteen years old.
GRP	There was no YO Ward. However, two cells in A Ward had been allocated for YOs, and at the time of the visit both convicted inmates and remandees between the ages of seventeen to twenty were held there.
HWC	B1 and B2 Wards housed inmates aged sixteen to twenty-two who had been sentenced under the Ordinance No. 28 of 1939.
JRP	D1 (Right) B was the YO Ward. Convicted and remandee YOs were held together in the ward. The eldest inmate was nineteen and the youngest sixteen years old.
KGRP	YOs were kept in one side of the PH. The other side housed sick adult inmates and two party convicted inmates who were there to take care of the sick; there was no physical barrier between the two sections of the PH Ward. Amongst the YOs, there were two sixteen-year-old prisoners and one seventeen-year-old prisoner at the time of the visit. However, it was observed that there was a twenty-year-old in A1, two twenty-one-year old inmates in A2, one twenty-two-year-old in A3 and one twenty-one-year-old in D.
KWC	No separate ward for young convicted prisoners was observed.
KRP	YO Ward housed both convicted inmates remandees between sixteen to twenty-one years. Those who looked younger even though they were older than twenty-one were also kept there. The youngest inmate at the time of the visit eighteen years old.
MCP	A Ward housed inmates under the age of twenty-two.
NMRP	K Ward housed inmates aged eighteen to twenty.
NRP	The YO Ward housed both convicted inmates and remandees under the age of twenty-one.
PCP	A2 Ward housed both convicted inmates and remandees under the age of twenty. The youngest inmate at the time of the visit was eighteen years old.
POPC	Parakum Ward was said to be allocated for young convicted inmates, not necessarily those who are aged sixteen to twenty-two, but persons who are comparatively young – no data available on the age limit.
WCP	YO (Upper Ward) housed YOs. Some YOs in the wards were in transit at Welikada before being transferred to the Treatment and Rehabilitation Centre in Kandarkadu. Some young inmates in transit to Kandarkadu were found in a separate cell in I1 Ward, prior to registration, which usually houses new inmates overnight who have not yet been registered in the prison and assigned a ward
WWC	No separate ward for young convicted inmates observed.

It was further observed that where there was a separate 'YO Ward', both remandee and convicted YOs were housed together, contrary to the principle that convicted and unconvicted prisoners should be housed separately, i.e. convicted and remandee YOs can be found housed in the same YO ward if the upper age limit of the said YO ward is twenty-two years. Moreover, when prisoners are sent to the PH, there is no separate ward or section for YOs, who are housed with adult patients. In HWC, it was mentioned by officers that when a YO is admitted to the PH, an officer is stationed to stand guard.

The Commission observed that in at least two instances young persons aged over twenty-two years were housed with persons under eighteen years. For instance, in ACP a convicted prisoner aged twenty-four years was in the YO ward and stated that the SP had decided he is more suited to be in the YO ward, instead of an adult ward, due to the specific circumstances of his background.¹¹⁵ In another instance, in BRP, the rehabilitation officers informed the Commission that a thirty two year-old remandee diagnosed by National Institute of Mental Health (hereinafter referred to as NIMH) with acute schizophrenia is housed at the YO ward with eighteen to twenty-two year olds, because the mentally ill remandee is at risk of being bullied by other adult prisoners.¹¹⁶

No female wing has a separate ward for female inmates under the age of twenty- two.

2.5. Criminal prisoners and civil prisoners

SMR 121¹¹⁷ states that civil prisoners shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order and that their treatment shall be not less favourable than that of untried prisoners.

In national legislation, Section 178 (a) of the SRs states that civil prisoners shall be kept separate from all other classes of prisoners and placed in exclusive occupation of a room or cell better equipped than an ordinary cell or ward with the permission of the SP.¹¹⁸

¹¹⁵ The interviewee was convicted by the Prison Tribunal while he was in remand at NMRP. Once he was sent to ACP, the SP having inquired into this case and the background decided the prisoner must be kept in the YO ward with inmates eighteen to twenty-two years old for his safety. This was due to the prisoner's family's involvement in organized crimes whereby many family members had been killed as a result of gang rivalries.

¹¹⁶ This thirty-two-year-old was remanded for a murder charge and had been in prison for the past ten years, as his case had been postponed indefinitely, given the medical diagnosis. He has no known family or guardian and no legal representative.

¹¹⁷ SMR 2015, r 121, 'In countries where the law permits imprisonment for debt, or by order of a court under any other non-criminal process, persons so imprisoned shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall be not less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.'

¹¹⁸ SR 1956, s 196 (1) 'On the payment of a fee fixed by the Superintendent, any unconvicted prisoner or civil prisoner may be permitted by the Superintendent to be placed in exclusive occupation of a room or cell better equipped than an ordinary cell or ward, if such a room or cell is available and the status and condition of such prisoner warrant the provision of such accommodation.'

(2) With the permission of the Superintendent, any unconvicted prisoner or civil prisoner who has been placed in exclusive occupation of a room or cell under paragraph (1) may procure at his expense such furniture and other equipment for that room or cell as may be approved by the Superintendent.'

It was said by the officers of the RC Branch of WWC that when allocating wards, the CJ considers whether the offence was of a civil nature or a criminal nature. However, this fact was not confirmed by the SP during his interview, who said that they allocated wards according to the availability of space. No other RC Branch of prisons visited as part of this study mentioned that prisoners are segregated as civil and criminal. Moreover, no SP in his interview (*at POPC the CJ was interviewed in the absence of the SP) mentioned that the inmates are segregated as civil and criminal. The then Commissioner of Prisons (Operations) mentioned that the distinction between civil and criminal prisoners is no longer observed.

2.6. First offenders and reoffenders

Section 178 of the SRs states that prisoners previously convicted, and prisoners not previously convicted shall be kept separate, so far as the arrangements of the prison permit. Section 402 of the DSO defines classes of inmates based on the conviction history and introduces three classes of inmates: First Offenders (FO)¹¹⁹, Reconvicted Prisoners (R/C)¹²⁰ and Recidivist Reconvicted Prisoners (R/R/C)¹²¹. Sections 401 and 403 of the DSO stipulate the prisons to which each category of prisoners will be admitted, and it is decided according to both the category (FO, R/C, R/R/C)¹²² and the length of their sentence.

The number of previous admissions to prison, based solely on the information provided by the prisoner, is entered into the prisoner's personal file (Prison 17 Format). In WCP, this information is entered into the electronic Prison Information Management System¹²³,

¹¹⁹ DSO 1956, s 402 (a), 'Any prisoner who is admitted for the first time to prison irrespective of previous convictions in respect of which he has been fined, bound over, or otherwise dealt with, e.g. Probation, Borstal, &c. The test of classification into this class will be whether the prisoner has served a previous prison sentence and not the mere fact of conviction.'

¹²⁰ ibid s 402 (b), 'Any prisoner who has served one or two previous prison sentences only. Here too the test is whether the prisoner has served a previous prison sentences and not mere conviction.'

¹²¹ ibid 402 (c), 'Any prisoner who has served over two prison sentences.'

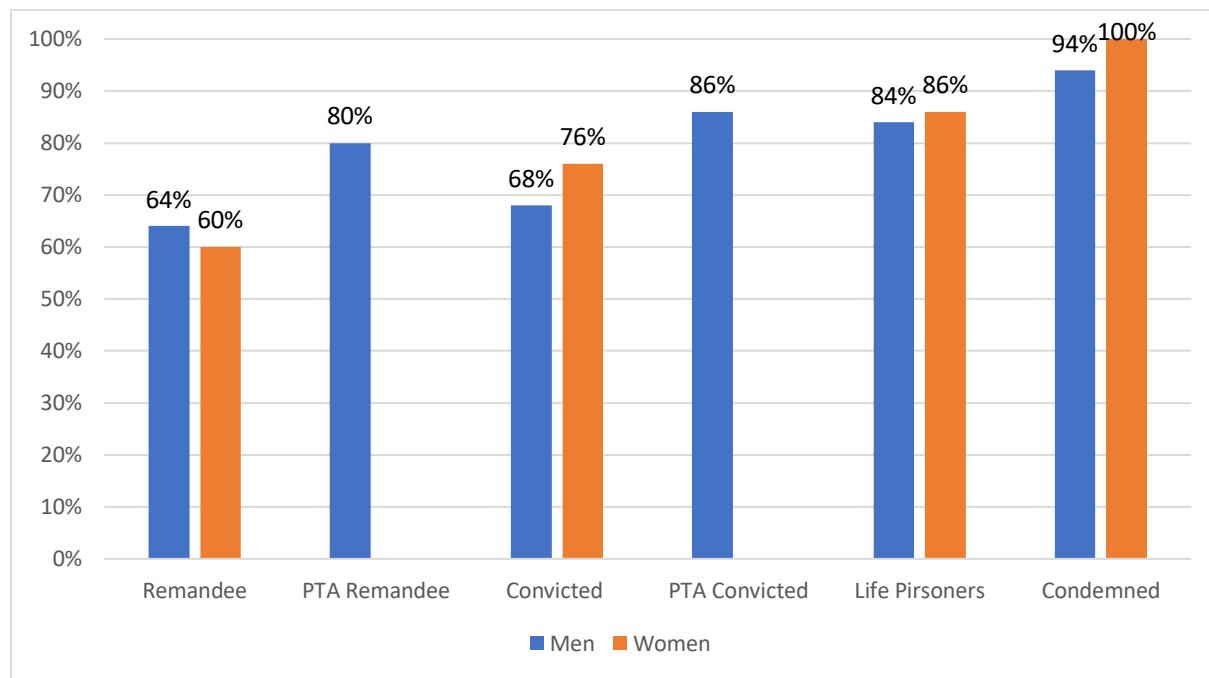
¹²² These abbreviations are used by the prisons themselves to categorize prisoners.

¹²³ There is a separate office section with IT facilities and dedicated staff to manage the Prison Information Management System at WCP. The physical facility was opened on 19 January 2009, but the Information Management System is even older. This system has information on the case, court and offence, classification, photo (right/left/front), whether the inmate attended the orientation programme, health condition, inmate complaints, private property, inmate history, inmate characteristics and physical identification marks (For the condemned and special prisoners- four physical marks should be included, for others three marks), educational qualifications, employment, family data etc. The prisoner number is automatically generated and therefore, a prisoner must be entered to the system on the day of the admission itself because otherwise on the following day a different number will be generated. Officers in charge of the unit mentioned difficulties, such as inadequate internet facilities (4GB only per month per officer), shortage of staff members to update the system (six officers are not adequate to manage the system daily and complete backlog too), Headquarters not granting them full access to the features they need for the smooth running of the system etc. For example, it is only Headquarters that has access to filter data and use it, the officers at WCP only undertake data entry. They also mentioned that the system will not be useful unless the same system is introduced at other prisons around the country too, as part of a centralised system, for example to check the recidivism rate of a particular prisoner without asking him for information. The Commission too observed that it was easier and quicker to obtain

according to the category (FO, R/C, R/R/C). The shortcoming of this process is that since there is no centralised database, the administration has no means of verifying claims made by prisoners.

The PO states that convicted prisoners are sent to WCP if they are being imprisoned for the first time, to PCP if it is their second or the third imprisonment, and to MCP if it is the fourth and thereafter. However, this categorization applies only to prisoners with a sentence of more than six months, while prisoners with sentences less than six months will be imprisoned at a prison where they were initially remanded or the prison closest to the court that convicted them.

Graph 7.1 – Male and female respondents across prisoner categories in prison for the first time



67% in the total male sample and 64% in the total female sample stated they were in prison for the first time, illustrating that more than half the prison population is in prison for the first time. Despite the large number of first offenders in the Sri Lankan prison system, the Commission found that in almost all prisons visited, prisoners are not segregated based on whether they are first offenders or recidivists, but instead are categorised based on, age or physical/mental condition or the detention status (life, condemned etc.) or the nature of the offence committed (theft, murder etc.), as discussed below. The Commission did not come across a ward specifically allocated for first time offenders.

access to prisoner files at WCP by manually checking the hardcopies of Prison 17 prisoner files, than checking the system as the data entry for even prisoners at WCP is not yet complete.

The housing of prisoners categorised according to the recidivism rate can contravene SMR 59, which states that prisoners shall be held, to the extent possible, to prisons close to their homes or their places of social rehabilitation. The number of requests the Commission received from prisoners who wished to be transferred to prisons close to their homes where they would be able to receive frequent family visits, illustrates the importance of the SMR 59, since the lack of family contact can adversely impact a prisoners' mental well-being during incarceration and hamper rehabilitation. On the other hand, due to various factors, such as the fact there are only four closed prisons in the country designated to house convicted prisoners, and security considerations regarding those who have committed extremely serious crimes, prisoners cannot always be housed close to their place of residence. Further, housing recidivists separately might assist in providing rehabilitation programmes focusing on the root causes of recidivism. The prison system could also allocate different wards and impose strict segregation between the three categories within the same prison, thus facilitating prisoners' requests to be housed in a prison closer to their home town. However, this would require suitable infrastructure, the formulation and implementation of different types of rehabilitation programmes within the same prison, as well as qualified staff.

2.7. Segregation of prisoners according to the nature of the offence and their character

In interpreting SMR 93 (1)¹²⁴ it is assumed that segregation according to the nature of the crime committed is desired¹²⁵. Although Section 178 of the SRs in the national law does not mandate segregation according to the nature of the offence, sometimes, the prison administration does segregate prisoners according to the offence. The best example of segregation of prisoners according to the nature of the offence committed comes from ACP. At ACP officers stated that the wards are allocated according to the offence: offences related to heroin, cannabis, moonshine/illicit liquor and other drugs; road accidents, drunk driving, warranted bail etc.; theft and robbery; rape, attempted rape, sexual harassment etc.; maintenance, brawling, assault; murder. However, in general, segregation according to the severity of the offence does not happen, mostly due to the severe lack of space. A senior jailor in WCP described it thus:

“What do you think we can do about separating prisoners? One of the biggest problems is that the man who comes in for being drunk in the street goes out as a drug addict and gets involved in drug dealing. The boy who comes to prison for stealing something from a shop, goes out as an underling of a mafia boss.”

¹²⁴ SMR 2015, 5 93 (1): The purposes of classification shall be to separate from others those prisoners who, by reason of their criminal records or characters, are likely to exercise a bad influence, and to divide prisoners into classes to facilitate their treatment with a view to their social rehabilitation.

¹²⁵ SMR 2015, r 93 (2).

Section 408 of DSO refers to ‘Star Classification’, which is a type of discriminatory segregation introduced with the object of securing, ‘the segregation of prisoners of education and good social status, who are not versed in crime or of corrupt habits, from prisoners of a totally different social status, of inferior mentality and education, constant association with whom would have a detrimental effect on the former both mentally and morally’. It should be noted that the aim of Star Classification, as evident from the wording of the provision above, is not the segregation of prisoners according to the nature of the offence but rather according to social status, with the premise that if one is of a certain social class then one’s character is inherently better than those considered to be of a lower social classes, and hence will be adversely affected if one is housed with them.

The only reference to the nature of the offence in relation to those who can be categorised under Star Classification is in Section 409 of the DSO which mentions, ‘any prisoner who has never been previously convicted, or, if convicted, is for special reasons¹²⁶ considered not habitually criminal or of corrupt habits, may be eligible for admission to the Star Class’. It should be noted that the reference is qualified with the condition, ‘if his education, character, social standing and conditions of life into which he was born and to which he was accustomed are such as to render segregation from the ordinary type of prisoner desirable in his moral interests’, making it a discriminatory provision based on social standing. Section 412 of the DSO further states that prisoners who are eligible for ‘Star Classification’ shall be separately located and as far as is practicable, kept apart from other prisoners when out of their cells. Section 414 of the DSO lists ‘essentials’ enjoyed by prisoners falling within this classification¹²⁷, to which other prisoners not within this classification are not entitled. Such ‘essentials’ include shaving three times a week, personal toilet requisites, such as shaving soap and brush, mirror, razor, toothbrush and dental powder or cream, which are essential to every human being.

SMR 95 encourages a system of privileges ‘appropriate for the different classes of prisoners and the different methods of treatment in order to encourage good conduct, develop a sense of responsibility and secure the interest and cooperation of prisoners in their treatment’. The purpose of this rule is to incentivize good conduct and encourage prisoners to aspire to ascend the hierarchy of classes within prison, in the interests of maintaining order in the prison and facilitating the rehabilitation of prisoners. The Sri Lankan equivalent of this rule should therefore be amended to remove classifications based on social standing, and should reward persons displaying good behaviour, regardless of their background. The SMR is in line with the suggestion of an inmate set out below:

¹²⁶ A person whose previous convictions do not involve moral turpitude or one whose previous offence was committed in his youth or in whose case a long period has elapsed since his previous offence may fall within the scope of this rule.

¹²⁷ DSO 1956, s 414, prisoners falling within the ‘Star Classification’ have the ‘permission to possess and use clothing and bedding as laid down in Schedule II of the Statutory Prison Rules for type B males, and in addition one knife, one fork, one spoon, one enamelled plate, one enamelled bowl, shaving three times a week, personal toilet requisites such as shaving soap and brush, mirror, razor, tooth brush and dental powder or cream and facilities for attending Commercial classes where practicable’. It further states that the evening lockup for the prisoners classified in the Star Class should be altered to 1845h p.m. instead of 1700h

“Every prison has a set of people who are good and who don’t use contraband or indulge in contraband. The prison authorities can clearly identify these people. They should gather all the good people like us, and provide us with necessary benefits. So that people who are going down the wrong path will realize that if they also adhere to good behaviour and follow prison rules, they will get the same benefits. This way you can incentivize prisoners to be better people. Instead of doing this, the system makes good people like us also to think that it’s better to go down that road because the people involved in these illegal activities live like kings and have a better life here. So honestly, what is the use of being good people?”

The use of the Star Classification system as described by SMR 95 was not observed by the Commission. It was however observed that, often prisoners identified as of a ‘good social standing’ and character are housed in a separate ward. For example, in WCP, J Ward (Kovil Ward), which is tiled and has six ceiling fans, a proper clothes hanger running along the wall and a separate store room inside the ward with eighteen lockers and mats, was observed to be allocated to sixty-six convicted inmates. Similarly, K ward in WCP houses former government servants, prisoners with SD, IG1 badges¹²⁸ as well as other prisoners, some of whom had been long term prisoners and had been identified as prisoners of good conduct. In CRP, H Ward, which mostly housed incarcerated public servants, is tiled, has two fans and uninterrupted water supply most of the time.¹²⁹

Another provision, which mandates segregation according to the nature of the offence or the character of the prisoner that leads to discrimination is Section 183 of the SRs, which states that when housing female prisoners ‘known prostitutes shall be kept in a separate ward by themselves’. However, in practice, the separation of ‘known prostitutes’ was not observed by the Commission, except in the WCP Female Section, where according to the officers, Y Ward was dedicated to ‘those who are known to use drugs in prison’, but a few inmates housed in the ward claimed they were separated not because they use drugs in prison but because they are known to engage in prostitution. Inmates of Z Ward allegedly faced discrimination, such as being served food last and being deprived of outside hours. However, on a subsequent visit the Commission noticed that a larger number of inmates had been moved to Z Ward and the inmates claimed that the alleged discrimination no longer existed.

Prisoners categorised as ‘special’, i.e. considered high risk or requiring high security for a variety of reasons, for instance due to gang rivalries, such as at GRP, are often placed in cells or wards with restrictions on the number of hours they can spend outside. These persons were often noted to be those who were remanded or convicted for organised crime or drug offences. For example, in KGRP, prisoners are placed in A4 Cell Special Ward upon their own request on a Court order to provide ‘special protection’, or in special circumstances when they have attempted to escape prison. When categorising a prisoner as special, according to officers at NMRP, the gravity of the offence is taken into account in NMRP, with a person

¹²⁸ SD – Special Duty prisoner. IG1 – Industrial Grade 1. For a detailed discussion, please refer chapter Prison Work.

¹²⁹ For a detailed discussion, please refer chapter Inmate – Officer Relationship.

caught with one packet of *ganja* being categorized as ‘normal’ and a person caught with 1kg of heroin as ‘special’.

2.8. Segregation of prisoners who need special care and/or treatment

SMR 5 (2) requires the prison administrations to make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.

Within the national legal framework, although there is no corresponding provision in the legislation governing prison administration, Article 14 (1) (h) of the Constitution of Sri Lanka guarantees freedom of movement, while Article 12 (4) of the Constitution makes provision for special measures to be taken for the advancement of persons with disabilities. Likewise, Section 23 (2) of Protection of Persons with Disabilities, Act No. 28 of 1996 and Section 04 of the Amendment Act, No. 28 of 1996 reaffirm accessibility rights. Moreover, Accessibility Regulation No. 01 of 2006 requires that within a period of three years of the regulation coming into operation, all existing public buildings, public places and places where common services are available should be made accessible to persons with disabilities. The decision of the Supreme Court in *Dr. Ajith C.S. Perera v. Attorney General and Others*, S.C. (FR) NO. 221/2009 re-affirmed this right and stated that new public buildings or public places should be designed and constructed in accordance with the design requirements specified in the regulations in force thereby giving access to disabled persons.

The Commission observed that the manner in which prisons dealt with persons who need special care is by segregating them. This however was observed only in the male sections of prisons and not in female wings. For example, even in the ACP female wing, which has a separate PH building, segregation of inmates who need special care and/or treatment was not observed.

Persons with physical disabilities

In terms of persons with physical disabilities, to ensure that their condition and/or vulnerability is not further aggravated by existing accommodation facilities, it was observed in some prisons that the administration had allocated a separate ward for them (ex. GRP I and G Wards), sometimes with two or so convicted party inmates to take care of them.¹³⁰ However, in most prisons, even when there is a separate ward allocated for persons with physical disabilities, the Commission observed that some of them would be housed in normal wards (ex. In WCP L Ground Floor Ward there were four wheelchair bound inmates, even though G Ward has been allocated for inmates with physical disabilities.). It was further observed that whenever disabled inmates are housed in normal wards, some prisons had taken care to house them in a section of the ward where their mobility will not be further

¹³⁰ For a detailed discussion on the wards housing inmates with physical disabilities, please refer chapter Prisoners with Disabilities.

hindered. For example, the above- mentioned WCP L Ward is a two-storey building and the wheelchair bound inmates were housed on the ground Floor.

Physically ill

In most prisons visited there was a PH, which housed severely ill inmates.¹³¹ In terms of segregation of the physically ill from the prisoners with good health, technically only those seriously ill would be housed in the PH due to limited facilities, and inmates with less serious illnesses would be housed in normal wards. In some prisons there were wards allocated for the physically ill, in addition to the PH (ex. WCP G Ward). However, it was alleged by prisoners that often inmates with less serious illnesses are housed in the PH while seriously ill inmates are housed in normal wards, implying that being housed at PH was not based on illness but other incentives provided to officers. Since the Commission did not refer detailed medical records of prisoners, of both those in the PH and those sick and being kept in wards, the Commission could not verify this claim.¹³²

Elderly

In some prisons it was observed that a separate ward had been allocated for the elderly, such as I and G Wards at GRP and G Ward at WCP. However, it was observed that even where there are separate wards sometimes inmates even older than those who are in the Elderly Ward were housed in normal wards. It was further observed that there is no uniform age limit to be classified as 'elderly.' For example, NMRP D Ward housed inmates aged between fifty-five to seventy, while ACP E2 housed inmates older than fifty years of age and WCP inmates aged fifty to sixty were often housed in the normal wards.

Persons with mental health/psychiatric illnesses

Both prisoners and prison officers stated that a significant portion of the prison population suffers some form of mental illnesses, such as depression. They based their comments not on medical diagnosis but on observations of the symptoms exhibited by prisoners, which they construed to mean the person was in a depressive state or not of good mental health. This section however, discusses the segregation of prisoners with serious psychiatric impairments, such as schizophrenia or bi-polar disorder. Sometimes, especially if there is a pre-incarceration clinical diagnosis, the prison administration would place such prisoners in a ward for prisoners with mental illnesses, commonly called the 'Mental Ward'. Being placed in such a ward has led occupants to be classified as 'crazy', thereby resulting in discrimination.¹³³

¹³¹ For a detailed discussion, please refer chapter Access to Medical Treatment.

¹³² For a detailed discussion, please refer chapter Inmate – Officer Relationship.

¹³³ For a detailed discussion of the issues related to mental health treatment in prison, please refer chapter Access to Medical Treatment.

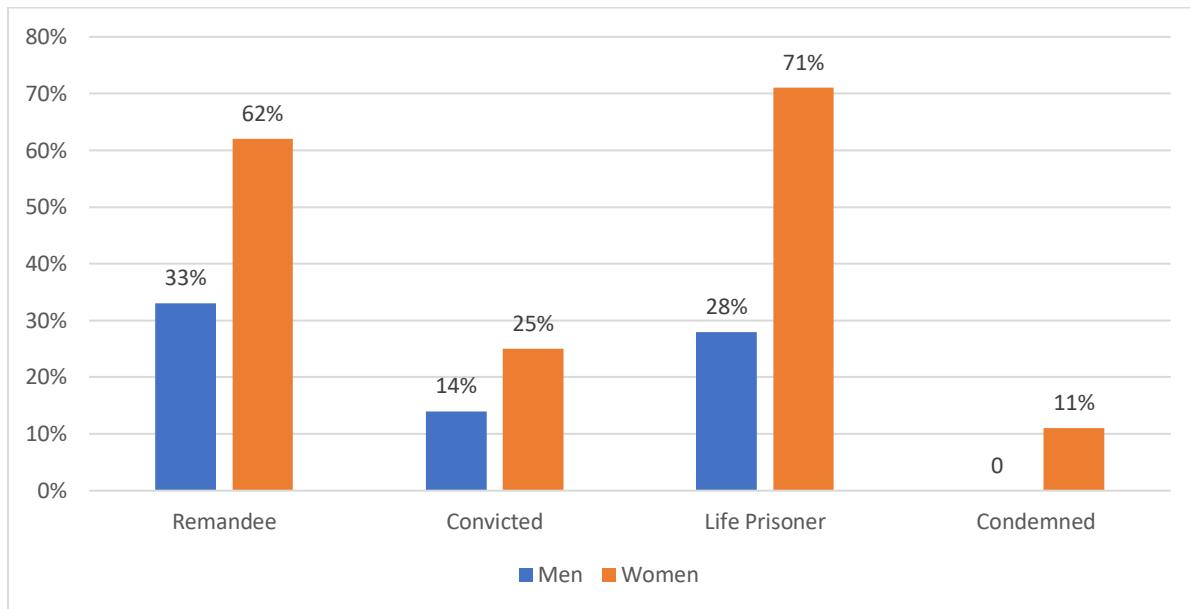
A dedicated ward for prisoners with psychiatric illnesses was not observed in every prison. In BRP F Ward there was a thirty-two-year-old man suffering mental illnesses held with the YOs. He was reportedly kept there for his own safety. ARP B1 housed twenty-one persons with mental health issues with other inmates, and there was a separate cell outside, which had originally been constructed to function as a toilet, for those who have to be isolated. GRP I Ward housed thirty persons with mental health issues, but it was not a ward solely dedicated for them as a few elderly persons and prisoners with physical disabilities were also housed in the ward. WCP Chapel D3 had six rooms for persons with mental health issues. Some prisons, for example BATRP, used the PH to house such persons. PH in MCP and WCP PH had separate psychiatric wards.

Even where there was a separate mental health ward, the ward conditions were not ideal considering the vulnerability of the occupants. In PCP B1 Ward, which was the mental health ward with cells, three to five inmates who are undergoing treatment for different mental issues would be placed in a cell and locked together at night. Persons with serious mental illnesses were said to be kept alone in a single cell. Two convicted inmates, who had no qualifications or training in the provision of care to those with serious mental health disorders were assigned to take care of the inhabitants of this ward. Further, it was noted that the living conditions in the mental health wards often served to exacerbate rather than improve the mental health condition of prisoners. For example, no cell in B1 Ward had lights and there were only two lights in the corridor, rendering it dark inside the ward, even during daytime. In ACP Y2 Ward which housed two persons with depression, there were no lights in the cells and the inmates were not allowed to come out of the ward. KRP had a 'Mental Health Patients Ward' which did not have adequate ventilation, natural light or space to walk. KRP PH Cells (Special) were used to keep persons with mental illnesses in isolation if there is a judge's order to that effect - once again, there was no light inside the cell and natural light was almost non-existent.

2.9. Drug offenders and non-drug offenders

In Sri Lanka, some prisons separate drug offenders from other prisoners but they are not provided any drug rehabilitation except at MCP, WCP, ARP and WWC, which had some form of treatment for drug dependency. SMR 93 (1), referred to previously, is relevant to studying the segregation practised in Sri Lankan prisons. SMR 12 (2), which stipulates that where dormitories are used, they shall be occupied by prisoners carefully selected so they are suited to associate with one another in those conditions, is also relevant to this type of segregation.

Graph 7.2 – Male and female respondents in prison for drugs related offence across prisoner categories¹³⁴



The study found that 23% of the total male respondents and 56% of the total female respondents were in prison for drugs related arrests/charges but the study did not contain questions to distinguish between drug dependent persons amongst them. Regardless, given the large number in prison on drug related charges it is likely that a number of them will be drug users.

In every prison those who are in prison for drug related offences, some of whom could be drug dependents, and other prisoners are not completely segregated, and many prisoners stated they have repeatedly requested prison administrations not to house them with persons in prisons for drug related offences (ex. Prisoners from G and H Wards at NMRP). The effects of this non-segregation are depicted in the following exchange during an interview with an inmate at WCP after the interviewee mentioned that he started using drugs after coming into prison:

Q: "Why did you start using it? Have you used it before when you were outside?"

A: No.

Q: Did someone ask you to use it? Like, "Come, use this and see"?

A: No, no. No one did that. I felt the urge myself to use because there were enough and more of it here. So, I started using".

¹³⁴ In our sample there were no men given the death penalty for drugs related charges. Note that the questionnaires were administered using a random sampling method.

Where treatment for drug dependent persons is concerned, in MCP PH there is a separate ward called the ‘Drug Rehabilitation Ward’ and about thirty-five young remandee inmates were housed there during the time of the Commission’s visit, and were being administered an informal drug rehabilitation programme. Inmates with drug withdrawal symptoms were placed in the cells at the PH temporarily. In ACP, it was revealed during inspection that some inmates (two remandees, five convicted) had been placed in Y4 Ward because the administration thought that they would have a bad influence on others as they were known or suspected to be at a risk of using drugs in prison. However, there was no treatment plan for these persons. In WCP, inmates housed in T2 Ward participate in a drug rehabilitation programme conducted on Sundays. At KRP, PH Cells (Special) were used to house inmates suffering drug withdrawal symptoms.¹³⁵ In this context where there is a considerable number of persons who are likely drug dependents, the lack of effective drug rehabilitation programmes points to a huge lacuna in combatting drug dependency and the drug trade. This also point to the need to send drug dependents for rehabilitation to treat substance dependency rather than to prison.¹³⁶

Drug offenders who might not necessarily be drug dependents but are known to be/have been dealers are not separated from the rest of the population either, which could create space for vulnerable non-drug offenders, such as those without livelihood, marginalized and living in poverty etc., to become involved in the drug trade. The potentially harmful impact of non-segregation or ill-planned segregation is illustrated by a female prisoner in ACP. She stated she was falsely accused of possessing drugs and remanded together with drug offenders in WCP for four months, as a result of which she later became involved in the drug trade. She described it thus:

A: “During those four months [in WCP] I lost my fear of prison. I met new friends and found places to buy goods [drugs] and met many people. They taught me how to do this business. After being released I didn’t have a place to stay. So, I started dealing drugs.

Q: When you were imprisoned in Welikada, was everyone in your ward drug-dealers?

A: In Welikada there’s a ward called “Y” ward. In that ward, everyone was a drug dealer. There were about 300 people and they were all dealing drugs.

Q: You were put into that ward?

A: Yes. After that, the fear was gone. Four months is a long time. We lived there and got used to it. Unknowingly, we adapted to that.”

¹³⁵ For a detailed discussion of treatment of drug abusers in prison, please refer chapter Rehabilitation of Prisoners.

¹³⁶ For a detailed discussion of the need to distinguish between drug users who are in no way involved in the drug trade and those who are users and/or engaged in the drug trade, please refer chapter Non-custodial Measures.

This further illustrates the adverse impact of the lack of impactful rehabilitation programmes in the correctional system, whereby persons are only incarcerated with no effective rehabilitation provided during the period of imprisonment, as a result of which the offender, such as those involved in the drug trade, leave prison unchanged.

2.10. Segregation of PTA prisoners and foreign nationals

The segregation of PTA prisoners and foreign nationals in Sri Lanka is not mandated by any international standards or domestic legislation or regulation but exists in practice.

PTA prisoners

The Commission noticed that within the prison system PTA prisoners are called ‘LTTE’ prisoners, referring to the Liberation Tigers of Tamil Eelam, which is banned within Sri Lanka as a terrorist movement. The prison officers and the notice boards with morning unlock numbers would refer to them as LTTE prisoners, and their ward sometimes would be called the LTTE ward.

PTA prisoners are usually housed in separate wards by themselves. In NMRP, there were three wards which housed PTA prisoners, one of which housed PTA prisoners only, while the other two wards housed some ‘high risk’ prisoners along with PTA prisoners. Similarly, in PCP, and ARP, PTA prisoners are housed in separate wards, at the latter it is called the ‘Max Ward’, referring to maximum security. Where there are not many PTA prisoners they would usually be housed in the ‘Special’ ward, like in MCP. However, in BATRP, a remandee arrested under the PTA was housed in a considerably large room by himself. PTA prisoners most of the time appreciated the fact that they are separated from others, particularly due to security issues and verbal abuse and threats to which they alleged they were sometimes subjected to as a result of being remanded/convicted under the PTA. In fact, PTA prisoners at NMRP, who were held in the ‘Special Ward’ requested to be transferred to the PTA (J) Ward, which houses only PTA prisoners, as they did not wish to be housed with persons who were in prison for drug or organised crime offences.

Foreign nationals

The Commission observed that at many prisons which had a considerable number of foreign national prisoners, a separate ward would be allocated to them, albeit sometimes shared with a few other local prisoners. WCP I2 Ward almost solely housed foreign nationals, even though amongst the sixty plus prisoners in the ward there were also a few locals. CRP too has an almost entirely foreign nationals ward with nine of eleven prisoners in the ward being foreign nationals. At all prisons at which foreign nationals were held, the administrations have tried their best to place all foreign nationals together. However, this did not always mean that foreign nationals were provided better accommodation facilities. For example, I2 Ward in WCP was congested, humid, had limited ventilation and light, and the ceiling was in a dilapidated state.

3. Ward conditions

SMR 13 stipulates that all accommodation provided for the use of prisoners shall meet all requirements of health, with due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation. SMR 35(c) and (d) states that the physician or competent public health body shall regularly inspect and advise the director on the sanitation, temperature, lighting and ventilation of the prison and also on the suitability and cleanliness of the prisoners' clothing and bedding.

Section 49 of the SRs states that the MO shall visit every part of the prison at least once a week, and daily when an epidemic disease exists in the neighbourhood, and should enter in his journal the results of such inspection, recording any want of cleanliness, drainage, warmth or ventilation, any bad quality of the provisions and insufficiency of clothing or bedding or any other cause which may affect the health of the prisoners. Section 16 of the SRs confers a duty upon the SP to inspect the yards, cells, cook rooms, latrines, and every part of the prison at least once a month, at uncertain times. Section 90 of the SRs states the Jailor too shall inspect daily every part of the prison, especially the cells and bedding and ensure that they are clean and in good order.

Monitoring by MOs was not observed by the Commission during the study, except in the case of the MO at ARP who stated that they undertake an inspection of the Remand Prison and the OPC every Saturday, checking for issues with sanitation and basic hygiene and pest issues, such as breeding grounds of mosquitos. The MO at ACP too mentioned that he undertakes ward inspections.

Section 141 of the SRs states that it shall be the duty of all prison officers to see that the highest possible degree of cleanliness is enforced in every part of the prison, as well as with respect to the persons of prisoners, their clothing, bedding, and everything else. The Commission encountered a few SPs while they were undertaking rounds in the prison premises but there were some prisons at which prisoners stated they hardly ever see the SP. Where the jailors are concerned, Section 90 of the SRs states the Jailor [referring to the CJ] shall daily inspect every part of the prison, especially the cells and bedding and ensure that they are clean and in good order. Inmates in many prisons told the Commission that even though some SPs and CJs do undertake rounds in the prison, they rarely inspect the interior of wards to check cleanliness.

In addition to the aforementioned prison officials, the PHI is also required to visit prisons regularly for this purpose. The Commission interviewed the two PHIs at the Prison Headquarters, who primarily undertake periodic general inspections of the prisons in Colombo and make trips to regional prisons upon the request of the respective SPs, in order to investigate a specific matter. Their recommendations are presented to the SP and CGP at the conclusion of every visit. When inquired if prisoners can complain to the PHIs directly, they informed the Commission that there is no system in place for prisoners to write to the PHI and report grievances but that they would usually speak to prisoners when conducting a visit.

SPs of regional prisons reportedly call upon a PHI in their region/locality to undertake periodic general inspections of the facility. The Commission found that in most prisons while the PHI undertook visits, according to prison officers they reportedly do not conduct thorough checks as per the international standards, nor provide recommendations for improving the standard of cleanliness.

It is further noted that SMR 42 states that the general living conditions addressed in SMRs, including those related to light, ventilation, temperature, access to open air and physical exercise and adequate personal space shall apply to all prisoners without exception. The sub-sections below will examine the different aspects of ward conditions.

3.1. Floor space

SMR 89 (3) states it is desirable that the number of prisoners in closed prisons should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such prisons should not exceed five hundred and the population should be as small as possible in open prisons. It further states that on the other hand, it is undesirable to maintain prisons which are so small that proper facilities cannot be provided.¹³⁷

Section 94 (2) (e) of the PO states that the Minister may make rules regarding the specifications and requirements of the several types of cells and wards.

There are two types of accommodation facilities used in Sri Lankan prisons: wards and cells. A ward is an enclosed open hall like area containing no barriers or demarcations and prisoners sleep on the floor, in rows. Usually, a crowded ward would have prisoners sleeping on either side with a small strip of empty floor space in the middle used as a walking path leading to the toilets at the end of the ward. Wards are the most common type of sleeping quarters in Sri Lankan prisons. The second type is cells, more specifically a ward with cells. In a cell-ward, cells will be on either side of the corridor which runs in the middle. In wards with cells, the doors of individual cells will be locked at night, and in some cases not. For example, in the cell wards where condemned prisoners are housed, individual cells are always locked. In remand prisons where inmates are held in cell wards, such as in CRP, NMRP, BRP, the individual cells are not locked. It must be noted that in CRP and NMRP the remand wards are very overcrowded. For example, in each cell ward in CRP there are more than 200 remandees housed. Therefore, the inmates utilize the corridor area for sleeping space, without which many inmates would have no sleeping space, given the severity of overcrowding. The availability of floor space in these two types of living spaces, i.e. wards and cells, is examined separately.

¹³⁷ SMR 2015, r 89 (4).

Cells

SMR 12 (1) stipulates that, where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself or herself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room [meaning it should always be one or three or more].

In national legislation, Section 179 of SRs states that so far as the number of cells in the prison permits, every male prisoner shall be locked up at night by himself in a separate cell, to be duly certified by the Commissioner as sufficient for one prisoner. No cell that contains less than fifty four superficial feet of floor space and 540 cubic feet of space shall be so certified as suitable for habitation, which was reiterated in Circular 11/2013, issued by the CGP which further emphasised that when calculating this space, the space in which tanks, toilets and corridors are constructed should be deducted. Section 180 of SRs also mandates that two inmates should not be locked inside a cell.

No standard size for cells was observed by the Commission during inspections. In terms of observations as to the allocation of floor space per prisoner (hereinafter referred to as FSP) in various prisons, the usual number of inmates sleeping in one cell was three to five. Deviations to this were observed in BRP A2 Ward with five cells which on the day of the inspection housed fifty-two inmates, and in WCP A2 Ward, which housed 133 inmates on the day of the Commission's inspection, where according to inmates the number of inmates in a cell can allegedly increase to twelve. It was reported by another inmate that in WCP B2 Ward the number of inmates per cell used to go up to twelve but is now usually six to seven. In GRP B Ward there were twenty cells in which 166 remandees were housed due to which eight to nine inmates slept in a single cell.

Some use the corridor to sleep as well, especially when the cell doors are not locked at night. Usually inmates who have been in prison a long time would sleep inside the cells whilst new entrants would sleep in the corridor. In B51 cell of B2 Ward, which was the smallest cell in that ward, one inmate would have to sleep with his head next to the toilet bucket¹³⁸ at night when there are six inmates inside. In WCP B1 Ward it was claimed that sometimes up to eight inmates are kept in a cell and when there is an eighth person, the toilet bucket is not kept on the floor but hung on a hook, so someone can sleep in that space.¹³⁹ In CRP, A Ward, which has twenty eight cells which are used for sleeping, had housed 212 remandees the night prior to the Commission's inspection.

¹³⁸ For a detailed discussion on access to the toilet facilities at night time in prison, please refer chapter Water, Sanitation and Personal Hygiene.

¹³⁹ For a detailed discussion, please refer chapter Water, Sanitation and Personal Hygiene.

Wards

Circular No. 11 of 2013 mandates that minimum floor space allocated per prisoner in every ward should be not less than 24 square feet ($8L \times 3W = 24^2$) and the height of the building should be of a minimum of ten feet.

As per DOP Circular 11 / 2013, the recommended floor space per person is as follows:

In a ward – 24 square feet

In a cell - 54 square feet

After being converted to metric units it is as follows:

In a ward - 2.22967m^2

In a cell - 5.01676m^2

It was observed that in these dormitory/hall types of wards inmates often demarcate the floor space in which they would always sleep by using filled water bottles, ropes, bed sheets etc. In some prisons it was observed that certain inmates would paint the floor area of their sleeping space in a different colour, as was seen in WWC.

There will usually be four rows of sleeping inmates in a ward, i.e., two rows of prisoners sleeping along the wall on either side of the ward and another two rows of prisoners after them, with their heads next to the feet of the first two rows, leaving a narrow path leading to the washing area at the end of the ward. Sleeping next to the wall or a 'border' is considered a luxury.¹⁴⁰ Due to overcrowding, in some prisons inmates reportedly have to sleep in the toilet area (ex. NRP Ward 9; JRP A2 & D2; CRP D) Overcrowding was at its peak mostly in wards which housed remandees: CRP B Ward had housed 196 remandees and C Ward 199 remandees the night prior to the Commission's visit. KGRP A1 was overcrowded with 106 remandees.

Salmon packing, one of the methods used to make as many as possible sleep inside a ward, was explained by interviewees at PCP, CRP and KGRP thus:

"Salmon Packing means, each person has to lie against another person, front to back (facing the same direction) enabling them to compact a lot of people into a small place. One person gets only about a space of six inches wide to sleep. Then, they put two fat people on either side of the row, so inmates cannot move even a bit and have to sleep like that until morning. There is another method called 'Lemon'. It is also the same as the above method, but inmates can sleep in a supine posture. That is the only difference."

¹⁴⁰ For a detailed discussion, please refer chapter Inmate-Officer Relationship.

Overcrowding and floor space per person

Overcrowding is the obvious reason for the legally stipulated FSP not being available to inmates. It was observed during the prison visits that almost every prison was overcrowded, except perhaps open prison camps/work camps.

A PTA convicted prisoner describes his first night in prison at CRP after being remanded in 2009 thus:

“First night after I was remanded, I was sent to a rectangular ward. It was very crowded. We had to alternatively arrange ourselves in a way that my head would be at another person’s feet. I didn’t sleep on my first night in prison. There is no room to stand even if I need to urinate.”

The Commission was informed that SPs still implement the practice of sending first offenders to WCP, as stipulated by the PO, although this provision is not useful in the current context, as it has caused WCP to become severely overcrowded since first offenders from around the country are required to be sent to WCP. To counter this, Circular 22/2016 allows SPs to send offenders who have been convicted for less than four years and who are suitable to serve their sentence in a work camp to be sent to the work camp¹⁴¹, rather than a closed prison. WCP SP mentioned, however, that one of the major reasons for overcrowding in WCP is the non-implementation of this Circular, whereby first offenders who could directly be sent to work camps are still being sent to WCP by SPs, since this is mandated by the PO:

“In 2017 or 2016, a circular was issued that people convicted with a sentence of up to four years could be directly sent to work camps. However, many remand prisons situated outside of Colombo, which receive convicted prisoners from courts, do not follow this circular. Instead when SPs just send everyone to WCP, WCP has to handle these prisoners... Until things get in order, they have to stay at least two weeks. This happens every month, which means its impact on overcrowding (at WCP) isn’t a one-time thing. It’s recurring. We can remove at least 200 to 300 prisoners from our roll if this circular is followed by all the prisons.”

The FSP in a few prisons was calculated according to the ward measurements obtained from the DOP Headquarters and the number of prisoners per ward observed by the Commission on each visit days, and has been attached in Annex 7.1. It should be noted that in some prisons, requested data was not available readily and not all prisons followed the same standard in reporting the data requested. For example, in some prisons, it was possible to calculate FSP for the whole building but not the FSP per ward because the data did not have clear demarcation of the area for wards within that building. Hence, the data was not accurate since the whole building contained spaces that are not used for sleeping such as

¹⁴¹ Work/open camps differ from closed prisons as they are prisons with minimal security and usually reserved for prisoners serving the last five years of their sentence, who are thought to be ‘rehabilitated’ and can be trusted to remain in an open prison. This is why SPs have to decide if newly convicted prisoners can suitably be trusted to serve their sentence in a minimum-security prison.

corridors or stairs, which had not been deducted. ACP of the closed prisons, BRP, KRP, GRP, ARP of remand prisons and, KWC, WWC, AOPC and HWC of work camps/open prison camps were identified by the Commission as prisons where FSP could be calculated across wards, subject to a few qualifications mentioned in each table in the Annexure, where applicable.

Table 7.2 - Overcrowding rates in Sri Lankan prisons¹⁴²

Year	Authorized Accommodation			Daily Average Population			Percentage Overcrowding		
	Convicted	Unconvicted	Total	Convicted	Unconvicted	Total	Convicted	Unconvicted	Total
2009	6,673	5,034	11,707	13,694	14,129	27,823	105.2	180.7	137.7
2010	6,728	5,034	11,762	13,094	13,890	26,984	94.6	175.9	129.4
2011	6,728	5,034	11,762	11,104	11,385	22,489	65.0	126.2	91.2
2012	6,728	5,034	11,762	11,298	12,305	23,603	67.9	144.4	100.6
2013	6,728	5,034	11,762	9,508	12,209	21,717	41.3	142.5	84.6
2014	6,728	5,034	11,762	10,144	8,964	19,108	50.8	78.0	62.5
2015	6,728	5,034	11,762	9,766	8,230	17,996	45.2	63.5	53.0
2016	6,728	5,034	11,762	8,853	8,625	17,478	31.6	71.3	48.6
2017	6,728	5,034	11,762	9,036	10,242	19,278	34.3	103.4	63.9
2018	6,728	5,034	11,762	8,967	11,417	20,384	33.3	126.8	73.3

Building new prisons and relocating existing congested prisons, which are located in prime land in major towns to rural areas, where large plots of land are available is being discussed by the relevant authorities as a solution to the issue of overcrowding. For example, the prison focal point at the Ministry of Justice at the time Mr. Bandula Jayasinghe stated that the Colombo prison complex is to be relocated outside Colombo in order to utilize the prime land on which they are currently located for other purposes.

SP of CRP at the time, Mr. K Bandara explained that relocating prisons without proper planning and foresight could lead to various complications:

“The solution to that [overcrowding] is not relocating prisons to the middle of nowhere. If we were to do it, we need to relocate the courts also to the same area where the prisons are situated. We can't transport people from out of Colombo to courts every day. Imagine prison buses being stuck in the Colombo traffic. Think of it from a security point of view – a prison break or a shooting can happen in a flash.”

In addition, it should be noted that the availability of free land should not be the only concern when building a new prison or relocating an existing one. Access to essential services and easy accessibility through public transport should be of paramount concern. KRP SP (at the time) Mr. Ajith Basnayaka voiced his concern over thoughtlessly built new prisons thus:

“See where they have built this prison. In the middle of nowhere, unlike WCP, Bogambara, MCP where the British built the prisons in the middle of the city, next to the court, next to the hospital, easier for the families to visit, near the Police Department, near the Fire Department. In places like this where we are the only place in the middle of the jungle, if someone escapes how can we find him? If a riot breaks out, by the time the police or the STF come via these tiny roads in the middle of paddy fields, we will be dead inside here.”

¹⁴² DOP, Statistics of Prisons 2018 (Vol 38. 2019)

Ranking officers from Colombo prisons also expressed that relocation plans that have been in the pipelines for more than a decade is one reason that many structural and systemic issues, including infrastructural issues, such as repairing old or dilapidated buildings or building new wards, have not been addressed. As a SP from a prison situated in an urban area noted:

“Infrastructure is the main issue. For the past ten to fifteen years, there is the story about the Colombo prisons being relocated, but it has not happened. They haven’t even thought of doing it in reality. They don’t even pass allocations to repair the road around the prison complex – connecting the three prisons. See the state of that road. These prison buses and all vehicles have to use these roads. Even that road isn’t repaired saying ‘the prisons are going to be relocated so no need to repair.’ How long does it take to build a prison? Pallekele is still being built. Here we are talking about three large prisons – the largest prisons in terms of population. They can’t relocate these prisoners overnight. No matter which government comes to power, prisons are always very conveniently forgotten. Improving the infrastructure is never seen as important. Only when things go wrong, we start digging into prisons.”

3.2. Lighting

SMR 14¹⁴³ states that in all places where prisoners are required to live, the windows shall be large enough to enable prisoners to read or work by natural light and artificial light shall be provided that is sufficient for the prisoners to read or work without causing injury to eyesight. Section 180 of SRs states that if there is a shortage of a sufficient number of separate cells in any prison and it is necessary to place prisoners in groups, such rooms shall be lit at night.

It was observed that the supply of natural light in most wards/cells in prisons visited was not adequate and almost everywhere the wards/cells were lit with artificial light. The reasons for inadequate natural light varied from insufficient inbuilt windows/vents, to structural issues in the building, such as some wards being built in a way that they receive no direct sunlight such as BATRP G Ward and CRP M1. Some wards, such as BATRP A Ward and KRP B Special Ward receive only an asymmetric supply of daylight. Daylight is also hindered by hanging the personal belongings of the prisoners on windows and prisoners intentionally covering windows/vents to protect themselves from pests (mosquitos and pigeons mostly).

¹⁴³ SMR 2015, r 14, ‘In all places where prisoners are required to live or work:

(a) The windows shall be large enough to enable the prisoners to read or work by natural light and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;

(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.’

The supply of artificial light is also inadequate, especially when considering the inadequacy of natural light. Only in a limited number of prisons it was observed that each cell had a bulb that functioned at night. Even in instances where there is a bulb inside each cell in a ward, it was observed that other wards in the same prison might not have bulbs inside each cell. The Commission did not observe a single prison which had bulbs in every cell in every ward. In the prisons visited in most wards with cells there were no bulbs inside individual cells, and only the corridor was lit with a limited number of bulbs or tube lights. In almost all prisons there was not enough light for prisoners to read at night without causing harm to their eyesight.

In KRP, A Cell Ward had no lights in the cells and only one bulb in the corridor, and the inmates claimed that it is really difficult for them to even eat at night. Even in ACP, a newly built prison, there were no lights in cells in the F Section and the corridor of a ward with ten cells was lit with only six lights. In ACP the G cells, which are used as punishment cells where those subjected to solitary confinement are held, and at one point during the Commission's visit housed two persons, one of whom appeared to have serious mental health issues, also did not have lights in the cells or outside of the cells.

It was further observed that even where adequate sources of artificial light are installed in a ward, the administration is reluctant to switch them on. For example, in F2 Ward of PCP, which was very dark as the inmates had covered the grilled windows with plastic covers to prevent pigeons entering the ward, the officers in charge (of F2) allegedly do not switch the lights on until 1630h. A condemned inmate from ACP, commenting on inadequate artificial lighting stated:

“It would be better if we have lightning inside the cells. Once we are locked up inside at around 1730h to 1800h in the evening, we don't fall asleep right away. So, it'll be helpful if we have light inside the cells so we can read a book or a newspaper, considering our mental state in here. We can't do anything like that, since we don't have any light inside the cell.”

An outcome of the lack of adequate artificial light, especially at night, is inmates resorting to unsafe wiring methods to access artificial lights which will be further discussed in the section 'Safety Concerns' in this chapter. Condemned prisoners island wide mentioned to the Commission that their eye sight has deteriorated due to the lack of adequate lighting in wards.¹⁴⁴ As a condemned prisoner from KRP stated:

“The problem in here is that, in these rooms, it has been thirteen and a half years since I've been in prison. I was twenty-six when I came here. Now I can't see. My eyesight is weak. They have provided electricity in most of the prisons. In here, we do not have electricity in the cell at night... I have been here for a long time. I get to be in the sun for only half an hour, and that is also only during five to six days on the weekdays. This is even less when it is a holiday. So,

¹⁴⁴ For a detailed discussion, please refer chapters Access to Medical Treatment and Prisoners on Death Row.

because of this reason my eyesight has become weak, after living like this. I cannot see small letters. It is all blurred."

Another aspect of artificial lighting is not the inadequacy of it but the excess of it. For example, in JRP, instead of having lights inside the ward, flash lights aimed into the ward had been installed outside ward, with one flash light per ventilation opening, which are switched on the whole night preventing inmates from falling asleep. It should be noted that SMR 43 states that the placement of a prisoner in the dark or in a constantly lit cell/ward amounts to torture or other cruel, inhuman or degrading treatment or punishment.

3.3. Ventilation

SMR 14(a) states that in all places where prisoners are required to live or work, the windows have to be constructed in a way that allows the entry of fresh air whether or not there is artificial ventilation. In the national law, Section 179 of SRs states that cells should be properly ventilated. Section 89 of the SRs states that the Jailor should pay attention to the ventilation of the prison.

The first stand out feature regarding ventilation in wards in Sri Lankan prisons is the inadequacy of natural ventilation facilities. No standard size for ventilation openings in a cell or a ward was observed. For example, in MCP D1 Special Ward the barred ventilation opening in the cell was approximately 4 inches x 2 feet. The smallest vents observed were in WWC, which had groups of small patterned vents and no windows.¹⁴⁵ It was said by an officer that the premises used to be a hospital for tuberculosis patients before it was converted into a work camp, and therefore the wards were built opposing the direction of the wind, with the smallest possible vents. ACP had the highest number of ventilation openings observed.¹⁴⁶ Some prisons had small square or half circle shaped vents near the floor of a cell, in the outer wall of the cell. Most of these cells had otherwise limited ventilation as the openings are most of the time sloped and the cell doors are not grilled but fully boarded with one small eyehole (ex. GRP A Ward, BATRP C Cell Ward).

Natural ventilation is hindered due to many reasons, with the primary one being the structure of the buildings, some of which tend to be over a hundred years old, such as the ward that housed elderly prisoners in NRP that was a stable built during colonial period in the 1890s. Some buildings are also archeologically protected because of which structural modifications cannot be made, such as certain buildings at GRP and BRP. Further factors that hamper ventilation include overcrowding of the ward, prisoners hanging their belongings/clothes lines around the ward and prisoners intentionally covering vents as a safety measure to protect against pests. The lack of designated spaces for prisoners to store their personal belongings was observed to be a major contributory factor that hindered ventilation.

¹⁴⁵ In Ward 1, 2, 3, 4, 5 and 6 this was the situation.

¹⁴⁶ 26/28 grilled ventilation openings sized approximately 2 feet x 3 ½ feet per ward.

It was observed that where prisoners had designated lockers or a proper means to store their personal belongings, ventilation conditions were greatly improved. For example, ACP had outside clothes lines and personal lockers for inmates even though they could access lockers only twice a day, for half an hour each.¹⁴⁷ In BRP, there were no lockers and hence personal belongings were placed in bags provided by the prison and hung along the wall in numbered nails/hooks. In HWC, in the absence of lockers provided by the administration, some inmates had made lockers for themselves using timber they found in prison. In GRP, C Special Ward, which was an enclosed area within the C Ward, the humidity level was high as there were limited ventilation openings and because the inmates hung wet washed clothes inside the ward, which were dripping at the time the Commission was undertaking inspections.

The second element that must be noted is the lack of artificial ventilation facilities, i.e. fans in Sri Lankan prisons. Across prisons only a handful of wards were observed to have fans, and usually the fans were reportedly acquired by prisoners pooling their own funds, or through donations by charitable groups. In general, the wards with fans would fall into one of the following categories: PH Ward, Special Ward/Cell, Female Ward and wards holding prisoners from higher socio-economic classes. It was observed by the Commission that wards island wide contained makeshift fans assembled by inmates; a swing-like contraption made of clothes, ropes and a horizontal stick as an alternative to electronic fans. In the female section of NRP, although the ward on the ground floor contained electric fans, the administration employs the practice of turning them off for certain periods throughout the day, without a particular reason or stipulated policy for such a practice in place, and despite the repeated requests of the occupants to keep the fans switched on.

It was observed that when meshes were installed by the administration covering the windows/vents, ventilation was further obstructed because meshes that were used were not made for covering vents of residential buildings. For instance, inmates of WCP C3 stated that their ventilation decreased after meshes were installed covering the large windows in each cell (4 feet x 3 feet) in 2007.

3.4. Temperature

The general observation regarding the temperature inside wards is that it is usually hot and humid. The contributing factors are, limited in-built ventilation facilities and personal belongings being hung in a way which blocks the limited in-built ventilation openings further, and/or personal belongings hung in the middle of the ward (from beams) hindering the passage of the wind and overcrowding. In NRP L Ward, there were no windows in individual cells, which had grilled doors. Further, prisoners in this ward had only thirty minutes outside time per day and there were no fans inside the ward. The inmates claimed

¹⁴⁷ Almost all the inmates in ACP had been provided with a locker to keep their personal belongings (each ward had fifty-four lockers inside a separate grilled section, along with the TV and the section was locked). However, inmates could open the lockers only two times a day (0900h to 0930h and 1600h to 1630h), the reason given for this was otherwise inmates would charge illegal phones from the plug point installed for the TV.

that the cells become unbearably hot making it difficult to remain inside and that the prison administration has promised to procure fans. The Commission too, during the short time spent inspecting the ward, noticed that the temperature inside the ward was unusually high.

In the ARP Female Ward 1 there were no fans and it was extremely hot inside the ward during the daytime because it is in the line of direct sunlight throughout the day, the wall was meshed up to half the wall height, and there were no blinds. In JRP, one factor contributing to the increased temperature levels was the flashlights directed inside the ward at night through every ventilation opening.¹⁴⁸

4. Bedding

SMR 21 states that every prisoner shall, in accordance with local or national standards, be provided with a separate bed and with separate and sufficient bedding, which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

Sections 190¹⁴⁹ and 191¹⁵⁰ of the SRs guarantee unconvicted prisoners the rights enjoyed by civil prisoners under Section 59, to purchase their own bedding or receive it from private sources, and 61, to be provided bedding by the SP when they cannot provide it themselves, respectively. Moreover, the SRs state that the SP should ensure the implementation of the written recommendations of the MO¹⁵¹ and practitioner of indigenous medicine¹⁵² regarding the supply of any additional bedding [for the sick or the disabled].

Schedule II of the SRs contains stipulations about the provision of bedding to convicted inmates as follows:

- Scale A male and female prisoners should receive one blanket or cumbly which is to be worn for two years, and one mat which is to be used for three months, and a pillow and a slip which are to be used until worn out.
- Scale B male and female prisoners, should receive one blanket or cumbly, which is to be worn for two years and a mattress, a pillow, and a slip which are to be used until worn out.

These provisions grant the right of obtaining bedding from private parties to both civil and unconvicted prisoners and more importantly, cast an obligation upon the SP to provide both

¹⁴⁸ JRP A1 Ward had twelve flash lights directed at it from outside the ward, which were turned on the whole night.

¹⁴⁹ SR 1956, s 190, 'In respect of food, clothing, bedding, and other necessaries, every unconvicted prisoner may be permitted by the Superintendent to exercise the rights to which every civil prisoner is entitled under section 59 of the Prisons Ordinance.'

¹⁵⁰ ibid s 191, 'Where any unconvicted prisoner is unable to provide himself with sufficient clothing or bedding, the Superintendent shall supply him with such clothing or bedding as may be supplied in similar circumstances to a civil prisoner under section 61 of the Prison Ordinance.'

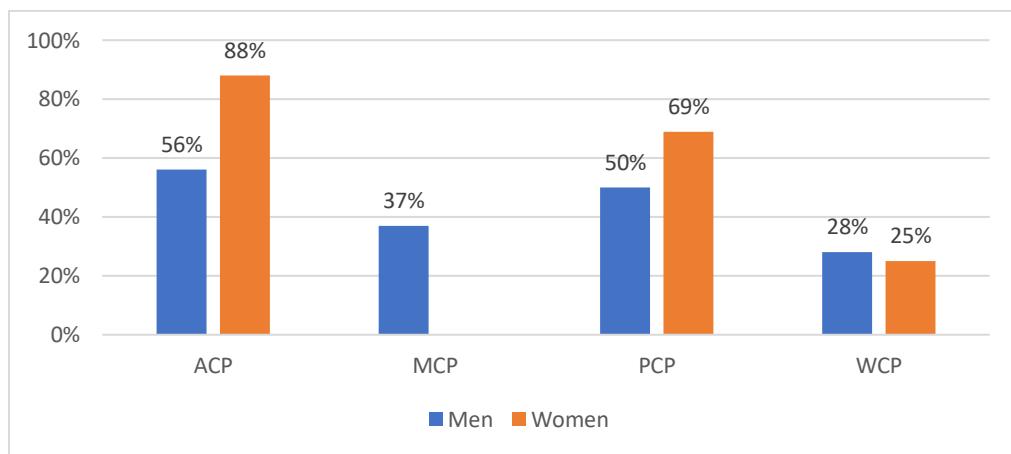
¹⁵¹ SR 1956, S 22

¹⁵² SR 1956, S 74 (2)

civil and unconvicted prisoners with bedding if they are unable to obtain it themselves. The Commission observed that this obligation was not fulfilled in most prisons, due to the lack of budgetary allocations made to the DOP.

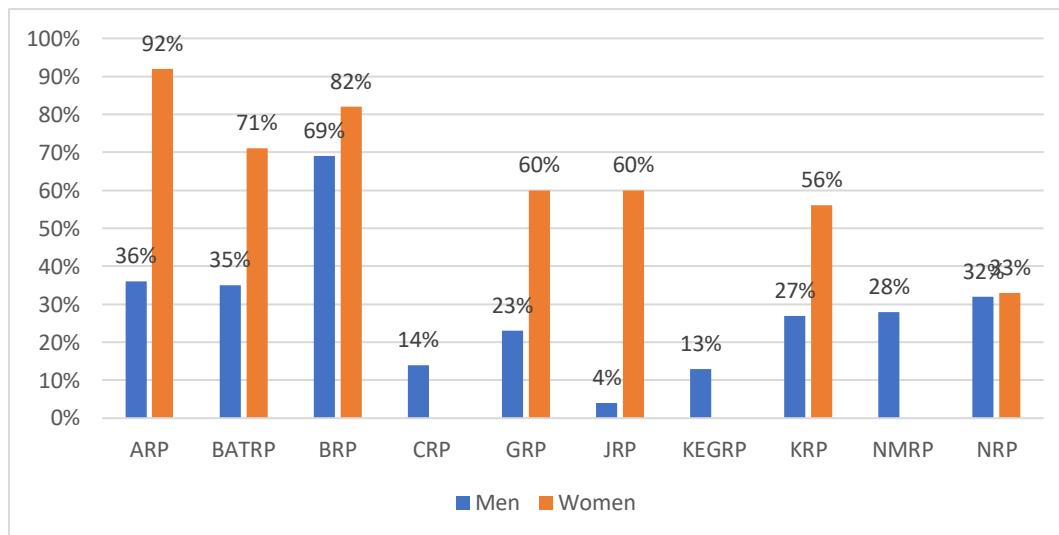
Of the total sample, while 43% of women had received some sort of bedding or a sleeping mat, only 36% of men had received any bedding or sleeping mat (or a portion of a mat). Generally, the bedding provided to prisoners by the administration is severely lacking. BRP is the only prison where the authorities said that every prisoner has a mat, both remand and convicted, even though there is no such legislative provision and is not a general practice across prisons. The inspection team confirmed that in every ward, mats were to be seen, even though it was not confirmed whether the number of mats tallied with the head count in each ward. In BRP, YOs under the age of twenty-two in F Ward had mats and pillows, and YOs under the age of seventeen in C Ward and the Female Ward had beds. Despite BRP being a remand prison, the Commission observed that the SP at the time Mr. Rohana Galapaththi had proactively arranged for mechanisms to provide bedding to the inmates with the donations of citizens and the prisoner welfare committee of the prison, which comprises of community members who serve on a volunteer basis.

Graph 7.3– Male and female respondents in closed prisons who have received some sort of bedding/mat (or a portion of it) from the prison¹⁵³



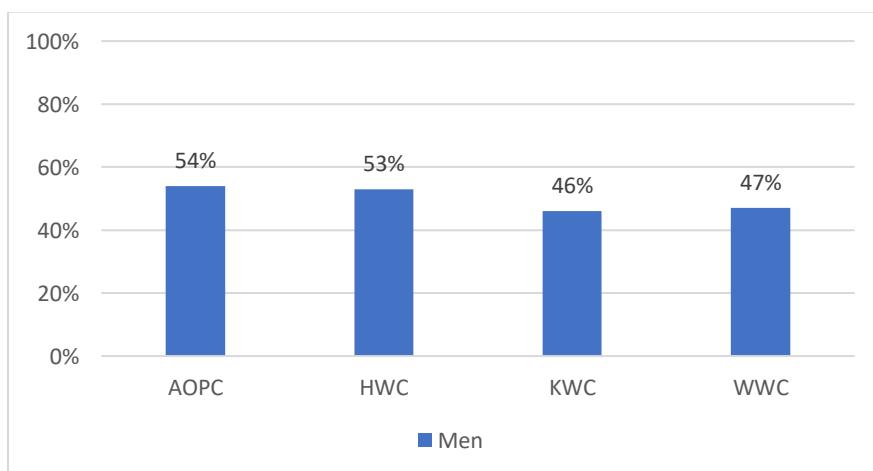
¹⁵³ There are no female inmates in MCP.

Graph 7.4– Male and female respondents in remand prisons who have received some sort of bedding/mat (or a portion of it) from the prison¹⁵⁴



Among the female respondents, the prisons where the most positive answers were recorded are 92% in ARP, 88% in ACP, 82% in BRP, and 71% in BATRP. Among the male respondents across prisons, the most positive answers recorded are 69% in BRP, 56% in ACP, 54% in AOPC, 53% in HWC and 50% in PCP. Given the smaller number of female inmates in these prisons, compared to the larger number of male prisoners, the prison administration has found it easier to cater to the basic needs of the female inmates than the male inmates.

Graph 7.5– Male respondents in open prison and work camps who received some sort of bedding/mat (or a portion of it) from the prison¹⁵⁵

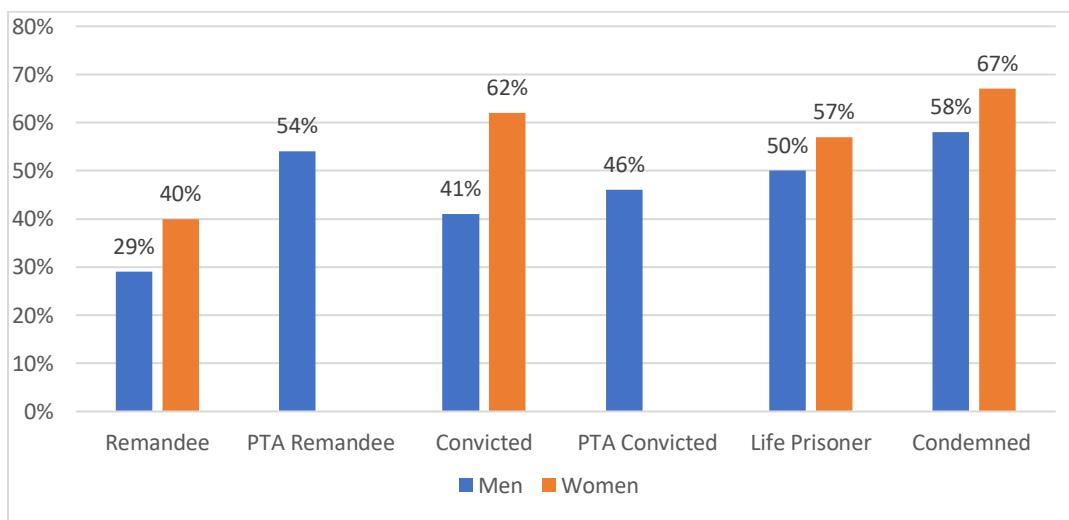


¹⁵⁴ There are no female inmates in MCP.

¹⁵⁵ There are no female inmates in open prison and work camps

In work camps and open prison camps the provision of sleeping materials was relatively better than that of the remand prisons and closed prisons. In every open prison camp/work camp most inmates possessed mats and sometimes even makeshift mattresses and pillows (ex. HWC). Makeshift mattresses and pillows were to be observed in almost every prison ward, at least in the possession of a few inmates. It was revealed during interviews that inmates pile their clothes in such a way as to form a makeshift pillow.

Graph 7.6– Male and female respondents across prisoner categories who had received some sort of bedding/mat (or a portion of it) from the prison in which they were housed^{156,157}



The higher proportion of condemned prisoners having received some sort of bedding is explained by the fact that the prison is required by law to provide a condemned prisoner basic provisions including a mat and at least one sheet, along with the 'condemned kit'.

A few different types of bedding observed in prisons island wide are depicted in the table below. It should be noted that the examples were selected where almost uniform type of bedding was observed within a single ward, and care was taken to select examples of different types of bedding:

Table 7.3– Different types of bedding across prisons

Prison	Prisoner Type and Ward	Bedding Type
ACP	Male and Female	Almost everyone was provided with mats, but no pillows.

¹⁵⁶

¹⁵⁷ Note that the groups of prisoners where the majority has received some sort of bedding are the groups that have been in prison the longest i.e. PTA remandees and convicted, life prisoners and condemned prisoners.

BATRP	Male Remandee (C Ward)	Nothing is provided, inmates use polythene covers to sleep on the floor.
BRP	Female	Six narrow beds with thin mattresses; additional inmates were provided with mattresses or mats.
CRP	Male Remandee (F Ward – Punishment Ward)	Nothing is provided, sleep on the floor.
GRP	Female	Pieces of thin yoga mat like material.
JRP	Male Convicted (D2 – A- Left)	Only one has got a mat from prison, others use their own bedsheets.
KGRP	Male Remandee (A1 Ward)	Nothing is provided, inmates use bedsheets they obtained from home.
KRP	Female	Pieces of a blanket like material instead of mats.
PCP	Male Condemned (E1)	Mats provided by the prison; few had made their own mattresses. Proper mats for the sick provided.

It should be noted that overcrowding and the lack of ventilation, which creates high humidity and heat within the wards and cells, sometimes results in prisoners being unable to use the bedding that has been provided. A number of inmates have stated that even though they had plastic straw mats, when the climate becomes hotter, they sleep on the floor given that they have no other way to seek relief from the unbearable heat. On a similar note, inmates of WCP D2 Ward, which housed around five people in one cell, claimed that the reason they do not use mats that were provided is because there is no space to lay all mats inside the cell.

5. Pest control

SMR 17 states that all parts of a prison regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times. Section 90 and Section 141 of the SRs fully described above, make it a responsibility of the CJ and all prison officers respectively, to ensure the cells and bedding are clean and in good order. ‘The highest possible degree of cleanliness is to be enforced in every part of the prison’.

During inspections the Commission hardly came across any pest control operations being implemented, except in MCP where fumigation was taking place – i.e. ‘mosquito fogging’. In most prisons the officers claimed that fumigators visit the prison regularly, mainly to control the mosquito population, which is quite high in prison premises mostly due to drains filled with stagnant water functioning as a breeding ground. Drains with still water were observed in MCP and ACP G wards and drains from the bathing areas blocked by food particles and plastic were noted in the WCP Female Section. In an interview, an inmate from BRP mentioned as follows, “They use the mosquito smoke machine, however (the number of) mosquitoes doesn’t decrease. The cockroaches and other insects die. Mosquitoes, and a species of flies – they don’t die”. The MO at ARP mentioned that the Ministry of Health (hereinafter referred to as MOH) supports them if they need to fumigate mosquitos. During the discussion the Commission had with the SP of BRP, following its visit to the prison, he

mentioned that the Municipal Council visits once a month and fumigates, but the prison has to pay the Municipal Council for the diesel and petrol, which is costly.

The rat population too is quite high within prisons, mainly because there is no regular and efficient garbage disposal mechanism. A dustbin at the end of the ward was observed in almost every prison, attracting rats inside the wards. The drainage lines act as tunnels for the rats to come inside, even when the doors/windows are closed since most of the drainage lines in the prison washroom areas are not covered. Moreover, the ventilation openings near the floor in some cells, such as in GRP, provide a way for the rats to come inside the ward from the outer wall of the building. In WCP H Ward, the team observed rats coming into the ward through the drainage; the end of the ward was wet with residual water from dish washing and the drain which was inside the ward had no covering thereby allowing rats to come to the dustbin at the end of the ward. Inmates of H ward stated that they stuff rags in between the doorsill and the floor to prevent rats from coming into the cell at night. Rats were observed at the main PH in Colombo too.

The lack of regular garbage disposal mechanisms has resulted in an increased population of domestic flies (ex. WCP B3) and cockroaches; flies were often seen in large numbers near the uncovered dustbins at the end of the ward, and in the kitchen and in food serving areas.

Another pest control issue that poses serious discomforts and health issues is the presence of bed bugs. The team observed serious infestations of bed bugs in many prison wards island wide.¹⁵⁸ In MCP it was said that once a month or once in six weeks condemned cells are treated for bed bugs; each ward for half an hour. In WCP the inmates from H Ward complained of a consistent infestation of bed bugs; according to them even though pesticides are being sprayed the issue persists. In an interview in ARP, a prisoner said:

“The bed bug issue is the number one issue. At night we can clearly see bugs crawling down from walls. [...] Their nests are built up there. There are mats and bugs live there. When we sleep at night they crawl on our bodies. There are that many bugs.”

In BATRP, the Commission team could not sit on the floor of the ward for even a few seconds before being bitten by bugs. Due to the lack of bug control mechanisms, the inmates in ARP had resorted to using concentrated solutions of detergent to wipe their nests off the walls and they claimed that it is effective to a certain extent. However, in prisons detergent is not readily available. In some prisons they have burned the bug nests, which can lead to a fire.

There is no insect protection installed in the form of meshes in the majority of wards. In wards where meshes are installed, the purpose often is not insect protection but preventing inmates from passing contraband from outside the ward. As insect protection was often not

¹⁵⁸ BATRP - B, C, G Wards, ARP - E1, H2, F Special, WCP - A2, C2, E, H and KGRP - A1 among others.

the intention of installing mesh, the meshes used are often not thin enough and as stated above not manufactured to ensure adequate ventilation.¹⁵⁹

The PHI of the DOP informed the Commission that the Medical Research Institute of Sri Lanka conducted an entomology test and made recommendations with regards to the problem of bed bugs. However, since the infestation is found within the walls of the prison structure, no amount of external chemical sprays can resolve the problem. The only permanent solution is to extract the nests by breaking through the walls and rebuilding them.

Another type of pest that troubles inmates is pigeons. It was observed that sometimes prisoners cannot switch the lights on in a ward for fear of attracting pigeons into the ward; for example, HWC Mayura House and PCP F1. Inmates had often covered ventilation openings/ceilings with polythene/mats/cardboard sheets to prevent pigeons coming inside, resulting in decreased ventilation and increased temperature as noted in F1, F2 and F3 of PCP. These three wards house condemned and condemned appeal inmates who are inside the ward the whole day except the half an hour to one hour exercise time when they are allowed outside. Hence, due to pigeons they have to stay inside a dark, warm ward with limited ventilation the entire day. The ARP Female Ward 2 was another ward severely affected by pigeons, into which pigeons would attempt to go via the ceiling and get trapped and die there. Since there is no way to retrieve the carcass of the bird the decaying corpse emanates a strong foul odour, which was noted by the Commission. WCP L Ward is also affected by pigeons due to which the inmates had placed a makeshift ceiling constructed of old rice sacks, to prevent bird droppings falling on them and on their food. Even though the pigeon issue has persisted for years in this ward, to date no solution has been found.

6. Safety concerns in wards

“We are tired. Prisoners are tired. Year in and year out we talk about the problems with the Chapel Ward. The issue with the ceiling, the issue with the floor, the issue with the toilets, the issue with the lack of space, the issue with overcrowding. It’s all talking and talking and talking. We tell the SP, the CJ, the CGP, the Minister. Every year. Administrations come and go. Governments come and go. Ministries change hands once a year and there is no solution. Now we are tired of talking of this.”

Prison officer, WCP

A safety concern identified in wards was roofing or ceilings that needed serious repairs. It was observed that often inmates would paste X Ray sheets and polythene sheets over the deteriorated ceilings to prevent pieces falling. For instance:

- In HWC, the ceiling of both Gemunu and Malithi Wards had been in a bad condition for over two years

¹⁵⁹ It was claimed by inmates of WCP C3 Ward that ventilation is limited after meshes were installed covering the large windows in each cell (4 feet x 3 feet) in 2007.

- In WCP A3 Upper Ward, the roof was damaged to such an extent that water comes into the ward and the corridors through the roof, and cell 18 of that ward had to construct a makeshift contraption to prevent rain water from coming into the cell, whereby the water gets collected in a cloth above the cell and is drained out from a tube.

Floors (in the upstairs wards of prisons) and stairs that need repairs is another safety concern identified. For example:

- In WCP, D1 the staircase from ground floor to first floor was shaky and broken, with many cracks and unsafe steps, and it was observed that inmates inhabiting the upper floor have to climb the stairs with filled water buckets in hand as there is no running water upstairs.
- WCP L Ward stairs had broken railings on the second floor, ward floor and the staircase are in a dilapidated state.
- In H Ward, of the two staircases leading up to the first floor, one was abandoned and the other needs serious repairs.
- WCP H Ward Cell No. 34 had no ceiling as it had completely fallen through and the inmates had placed a makeshift ceiling using old rice sacks to prevent dust from the unused second floor falling into the wards.

Buildings that are too old to house inmates still being used is another safety threat identified. The HWC Old Mosque Ward is a very old building which is not suitable to house inmates, and in WWC most of the buildings were observed to be in a dilapidated stage. In WCP H Ward, the second floor is abandoned, and gets wet when it rains via the ventilation openings that have no sills, and through the damaged roof. It therefore becomes almost flooded with the water seeping through the ceiling to the first floor, which is still in use. As the second floor is abandoned, pigeons have nested there, and bird droppings are washed down to the first floor during the rain. Half of the first floor too was not in a usable condition and is abandoned and shards of the ceiling of the second floor were falling into the first floor at intervals. The entire H Ward building was observed to be sinking on one side, as the building is very old. The whole building was condemned and abandoned about three years ago, but due to overcrowding the ground floor and a half of the first floor are still being used.

WCP SP mentioned:

“Just yesterday (13 February 2018) Central Engineering Consultancy Bureau (CECB) came to inspect Chapel [ward]. You have seen how it is. One corner of it is completely destroyed, it's falling down, and it's going to fall down on people's heads. See the L Hall, see the H Ward. You know about them as much as we do. You know the truth. One of these days these buildings are going to

come down crashing on 1000s of these prisoners and then we will have nowhere to hide. What will the international community say then? Everyone will be in big trouble then.”

He further mentioned:

“Every year we make an action plan. We make a priority list and in the Annual Budget Estimate we include the kinds of repairs that need to be done. But the thing is, let’s say we ask for Rs. 100,000, they cut it down and give us only Rs. 25,000. Then this Rs. 25,000 has to be divided amongst all prisons. Then I [WCP] get like Rs. 5000. With Rs. 5000 you can’t even turn around in a prison like this [that needs large scale repairs].”

An inmate at NMRP expressed his fears about the dilapidated building they inhabit thus, “We are scared. The old kitchen collapsed. [...] Our ward is also like that, not sure when it is going to collapse. It was built a long time ago. So scared whether it would fall. [...] there are crack marks and small chips are falling”. Another NMRP inmate said, “There are no life-threatening problems in the ward. The ward itself is the problem”.

The possibility of electric hazards was another safety concern identified. Since individual cells in most prisons do not have bulb holders, the inmates dig wires out of the wall which they connect forming a makeshift holder and place a bulb on it. Roof leakages increase the possibility of an electric hazard and in the event of a spark forming, a fire can break out and spread easily as most of these wards have wooden floors/ceilings. In WCP B1 Ward water was dripping near the TV, paving the way to a possible electrical hazard. Additionally, in many wards unsecured wiring was observed. For example, in CRP B Ward the Commission noticed loose electrical wires hanging in the ward. In KGRP A2 and A3 and NRP 1 the team noticed insecure wiring running outside the ceiling.

Female inmates at ACP expressed concern about the danger from serpents within the female section as there is a large undergrowth around the ward area, and there is no fully covered door to the ward, only a grill, through which a serpent can slide inside quite easily to the area where inmates sleep on the floor:

A: “There are snakes here, two people have seen them. A female officer killed a baby snake once. There’s no safety at the bottom [of the door]. They haven’t even covered the bottom with a sheet, so any animal can come through it at any time. There’s enough space for cat to slip through it.

Q: Is there a door at entrance of the ward?

A: There’s a door. There is no cover, only bars are fixed”.

7. Disaster risk management

SMR 1 states that the safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.

Section 286¹⁶⁰ of the DSO mandates that adequate fire extinguishers should be placed in different locations of the prison, and that the officers should be trained to operate them. Section 289 of the DSO states, 'Every officer must bear in mind that in the event of a fire occurring in any part of the prison, every effort will first be made to prevent loss of life, and then without delay every exertion will be made to secure the safe custody of prisoners, and if the fire should take place in the office, special attention must be paid to the saving of all books and records, specially prisoners' papers, registers...'

Where the training of staff on the operation of fire extinguishers as mandated by Section 286 of DSO is concerned, it was claimed by the officers of BATRP that no training on disaster management has been provided to officers. In ARP, the officers said that they were given a fire safety training in mid-2018. In most prisons, when inquired about disaster management training, the officers claimed that every one of them had been given basic training during their initial training programme, but there was no follow-up training. The PHI at the DOP informed the Commission that he does undertake inspections to check for fire hazards, etc, in the prisons in Colombo, but he does not recall any fire drills or fire audits being conducted during his tenure, and confirmed there is no evacuation plan in the event of a disaster.

Regarding the placement of fire extinguishers, it was observed during inspections that for the most part, an adequate number of fire extinguishers had not been placed where the inmates are housed.

Table 7.4– Places where fire extinguishers are installed

Prison	Place
ACP	Equipment of the fire brigade in a room at the entrance
ARP	Office and jailor room
BRP	Entrance (sand buckets)
CRP	Office complex
JRP	Kitchen, main entrance, entrance to the wards section
KEGRP	Stores and PH
WCP	Chapel, L and H Wards

In addition to the lack of training given to inmates and officers, and the inappropriate placement of fire extinguishers, it was also observed by the Commission, that the installed fire extinguishers would be inadequate in the event of an actual fire. For example, in BRP it

¹⁶⁰ DSO s 286, 'Special buckets marked "Fire" to be used for no other purpose and to be kept constantly filled with water, will be concentrated at various parts of the prison. In all prisons where Minimax or other patent fire extinguishers are provided, Superintendents will take steps to see that they are properly located and periodically inspected and that a few members of the staff are trained in the proper handling of these appliances.'

was observed that there were only a few small buckets/pails filled with sand lined up at the entrance.

Table 7.5- The state of the fire extinguishers at WCP

Ward	No. of inmates	No. of fire extinguishers
Chapel	1309	Five on the ground floor, no extinguishers upstairs.
H	106	Only one 9 litre CO ₂ extinguisher
L	592	One 9 litre water extinguisher inside the ward.

Chapel and H Ward extinguishers had been last inspected in November 2016 and the L Ward extinguisher, in June 2016. These extinguishers were due to be inspected in November 2017 and June 2017 respectively but when checked by the Commission on 02 December 2018, it was found that inspections had not been carried out as scheduled. In addition to the number of installed fire extinguishers being inadequate, they were also not maintained.

The lack of proper disaster risk management (hereinafter referred to as DRM) mechanisms is even more alarming when one considers the unique nature of prisons. As discussed above, in many prisons the elderly and disabled would be housed together in one ward (ex. WCP G Ward which housed 105 inmates of who more than twenty are disabled), which would be locked at night, usually from 1700h to 0600h. During that period the keys to the wards would be with the officers at the entrance. In order to unlock the door of the ward one should go all the way to the entrance and return with the key, which might take considerable time, depending on the size of the prison. Further, wards hardly have fire extinguishers. In such a context, all inmates locked inside a ward are at a grave risk, the elderly and the disabled even more so. Considering these factors, DRM should be given paramount importance by the prison authorities. Sri Lankan prisons are even more susceptible to fire, with their often-wooden floors and ceilings. A former CGP's comment below illustrates the difficulties that will be encountered in dealing with a disaster such as a fire with no plan in place:

“When I was the SP of WCP, there was a fire due to which I had to remove some prisoners; I commandeered the Ananda College hostel to house them. If there were a natural disaster there is no place to shift 4000 people who inhabit the CMB prison complex, and no way to transfer them. At the time I had all the Borella buses taken over for this purpose. They [DOP] are not prepared for emergency situations. If there was ever a fire at Welikada, there would be no place to house the prisoners and given the buildings are old and there is a lot of wood the fire would spread quickly.”

8. General observations

Segregation of prisoners is undertaken primarily based on their age, gender, offence and detention status, i.e. remandee or convicted, and certain prisons also separate foreign prisoners, PTA prisoners, persons with disabilities or psychiatric illnesses and even members of a higher socio-economic class. However, due to infrastructural limitations as well as the rudimentary system of collecting and collating information on prisoners, prisoners are not classified and segregated according to international and national standards, and rules of segregation are not uniform across all prisons. This is particularly problematic in the case of YOs and persons convicted of minor crimes who may be held with serious offenders, which risks breeding criminality within prisons and undermines the crime prevention objectives of correctional facilities.

Within the female prison population, segregation is largely not strictly enforced in most prisons to the same degree as it is with male prisoners due to the small size of the female prison population.

Prison wards and cells overwhelmingly do not comply with the requirements of floor space, light and ventilation standards determined by international and national legislation, and this is due to the outdated structure of the older prison buildings, poor architectural design of the new facilities and overcrowding of virtually every institution, except for the Open Prison Camps.

The Commission noted that conditions of the wards and other facilities are not regularly monitored by medical officers or public health inspectors, despite legal requirements in this regard. Prisoners frequently complained of pests in the wards, such as mosquitoes and bedbugs as well as rats and pigeons, which contributed to their distress. Pest control is not periodically carried out, if at all. These factors contribute to the creation of unsanitary and unsafe living conditions thereby placing the health and safety of inmates at risk. Inspections of wards revealed a number of hazards, such as crumbling roofs, which allow rainwater to flood the cells, and dilapidated wooden stairs.

Similarly, the number of fire extinguishers in the prison premises and the inconvenient placement of fire safety equipment, coupled with the lack of evacuation and disaster risk management plans are a major cause for concern. Since the wards and cells are locked at night, in the event of an emergency, in many instances, keys would have to be retrieved from the front office in order to rescue prisoners. In this context, vulnerable groups, such as the elderly and prisoners with disabilities, would potentially suffer the most harm.

8. Food

"They don't give us proper food here. The rice is not cooked properly and they cook rotten vegetables. They are trying to kill us by making us sick. They are treating us like this because we are prisoners but we have already been punished by the courts, and these officers are here for our protection. I don't think even cats and dogs would eat the food they give us. It's like water, there is no taste in that food. Even if they give a small quantity, if it was a bit tasty, we could eat it. Some people take one mouth and then throw it. After that, with an empty stomach we have to work. If we get a bit late to eat the food, they will tell us to go away. It's their work we have to do but we can't have lunch and we have to starve. These people treat us like slaves."

Convicted, BATRP

1. Introduction

This chapter discusses the provision of food with regard to the quality and quantity of food that is served and examines whether it meets the nutritional value and dietary requirements as stated in the relevant legislation.

SMR 22 (1) explicitly states that "every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served."¹⁶¹

In national legislation, Section 222 (1) states that "every prisoner shall be supplied with a sufficient quantity of plain and wholesome food"¹⁶², and further states in detail in the SRs and the DSO how the prison should ensure this fundamental right of prisoners.

2. Food in prison

Schedule I of SRs describes the diet to be distributed to prisoners under two Dietary categories; A and B, each consisting of eleven diets. Scale A sets out the diets provided for the local population and Scale B sets the diets for the foreign inmates. All prisoners are entitled to an Ordinary diet under Scale A or Scale B unless the administration specifies that he/she should receive another diet.¹⁶³ The diets are:

- Ordinary (non-vegetarian),
- Ordinary (vegetarian),
- Punishment No. 1,

¹⁶¹ SMR 2015, r 22 (1).

¹⁶² SR 1956, r 222 (1).

¹⁶³ ibid r 222 (7)(a).

- Punishment No. 2,
- Casual,
- Transfer,
- Low,
- Light Labour (non-vegetarian),
- Light Labour (vegetarian),
- Diabetic (non-vegetarian) and
- Diabetic (vegetarian).¹⁶⁴

Chapter VI of Part B of the DSO further presents in detail the dietary distribution of Scales A and B during the Morning Meal, Midday Meal, Evening Meal and Evening Cup of Tea.¹⁶⁵

The DSO is specific as to the vegetables that should be supplied in the diets, which fall under four categories; Category A – Leaves, Category B –Vegetable Fruits, category C – Starchy Vegetables and Category D commonly known as “English vegetables”¹⁶⁶, [Annex 8.1.], as well as regarding the amount of condiments and spices that the prisons should provide in food preparation¹⁶⁷.

In practice, the provision of specific ounces of oatmeal, sago, rusks, butter, congee rice or milk and saccharine tablets does not take place in prisons as stipulated in the Diet Distribution Scale B and in A and as mentioned in Schedule 1 of the SRs, as well as in the DSO¹⁶⁸. Further, although the Diet Distribution Scale includes beef, in practice only chicken is provided.

¹⁶⁴ ibid r 222 (7), “(b) Punishment diet No. 1 shall be given to prisoners who, under section 79 (c) of the Ordinance, are reduced to the penal stage as a punishment or are ordered to be confined in a punishment cell. This diet shall not be given for a period exceeding fourteen days.

(c) Punishment diet No. 2 shall be given to prisoners who, under section 79 (f) of the Ordinance, are ordered to undergo close confinement. This diet shall not be given after the expiry of the period of close confinement to which they are sentenced.

(d) Casual diet shall be given to prisoners who are admitted to prison at any time after rations for the day have been drawn.

(e) Transfer diet shall be given at the discretion of the Superintendent to prisoners (other than unconvicted prisoners) who are on transfer from one prison to another, in place of the diet which they would otherwise receive under these rules. The maximum period for which a prisoner may be given transfer diet shall not exceed 54 hours.

(f) Low, light labour, or diabetic diet may be given to any prisoner on the recommendation of the medical officer for such period as may be prescribed by him.”

¹⁶⁵ Refer Annex 8.3.

¹⁶⁶ DSO 1956 ss 517, 519 – 521, “No vegetables other than those specified above will be allowed. One oz. of the daily vegetable in all diets shall be from Category A and 3 oz. from Category B or C. provided that for the diabetic diet (both vegetarian and non-vegetarian) in Scale A, Scale B diets and prison diets No. 8 (Special A) and No. 9 (Special B) in the Prison Hospital scale, the kind of vegetables to be supplied shall be from Category D or any other vegetables commonly known as “English vegetables”; “No single variety of vegetable in any of these categories shall be supplied on more than 3 days a week.”; “During dry weather, the Superintendent may allow vegetables of Category B to be substituted for those of Category A”; “Vegetables of the pumpkin variety shall not be supplied more than once in 7 days.”

¹⁶⁷ Refer Annex 8.3.

¹⁶⁸ Refer Annex 8.2. and Annex 8.3.

Breakfast is served every day around 0600h and consists of coconut sambol with either bread or rice. At WCP, PCP ACP and at AOPC, bread is provided for breakfast as these prisons have their own bakery, whereas in almost all other prisons, rice is provided for all three meals. For lunch, the prisoners are usually given rice with two curries; one vegetable curry and either dhal or green leaves (mallum) with either meat or fish, usually at around 1200h – 1230h. Dinner is usually served between 1500h and 1600h -1630h, and again rice is served with one vegetable curry with either fish or meat. Foreigners and prisoners suffering from diabetes are provided a special diet upon the recommendation of the MO, which will be discussed later in the chapter.

According to the quantitative data all prisoners- 93% of the female respondents and 94% of the male respondents- agreed that the provision of food for all three meals happens at every prison without fail and said that they receive all three meals of the day. It was also unanimously stated that the authorities never stop the provision of food and water as a means of punishment. However, numerous shortcomings with the standard of the food that is served were identified. The Study found non-adherence to the implementation of the rules set forth in the PO, the SRs and the DSO where the quality and quantity of food are concerned, as well as the SMR, which will be discussed in detail in the following sections of this chapter.

Where other food and related items that can be consumed are concerned, there are contradictory provisions in the PO and the SRs. For instance, spirituous or fermented liquor, tobacco and betel, are considered contraband and not allowed inside prison as per Section 73 of the PO.¹⁶⁹ However, Section 193 of the SRs states that “with the permission of the Superintendent, every unconvicted prisoner or civil prisoner may procure at his expense and consume on each day such quantity of beer, cider, or coconut toddy as does not exceed one pint, or such quantity of wine as does not exceed one-half of a bottle”¹⁷⁰[emphasis added] and the legality of such items entering prison with the SP’s permission is reaffirmed by Section 237¹⁷¹. Moreover, Section 205 (1) of the SRs states that “on each day after the noon meal and the evening meal respectively, every unconvicted prisoner or civil prisoner may, at the expense of such prisoner and with the permission of the SP, have (a) one chew of betel (consisting of betel, areca nut, tobacco, and lime), or (b) two cigarettes or two cigars or one pipe load of tobacco for smoking.”¹⁷² In practice, in all prisons, except JRP, the consumption of betel, cigars or cigarettes is prohibited. At JRP it was noted that both the convicted inmates and remandees were allowed to smoke cigarettes and beedi, both inside and outside the wards. The notice posted outside the ward stated it should be done ‘in a manner which would not disturb the others and if it did, the SP will revoke the privilege’. As a convicted PTA prisoner in JRP stated:

¹⁶⁹ PO No.16 of 1877, s 73.

¹⁷⁰ SR 1956, r 193.

¹⁷¹ ibid r 273, “The following articles shall not be admitted into the prison, except by medical order or under the sanction of the Superintendent; - Tobacco, betel, spirits, opium, bhang, poisons, or drugs of any sort.”

¹⁷² ibid r 205 (1).

"At the beginning, when I was remanded in CRP, they allowed us to take five packets of beedi and one packet of cigarettes. Now they've stopped it. Here in JRP we are allowed to take five beedi and one cigarette."

Although the rules state that allowing the consumption of cigars, cigarettes is dependent on the discretion of the SP, allowing prisoners to smoke within the institution is a violation of Sections 193 and 237 of the SRs which only allow unconvicted prisoners to smoke. It is also a violation of Section 39 of National Authority on Tobacco and Alcohol Act (hereinafter referred to as NATA) No. 27 of 2006, which prohibits and makes smoking any tobacco product within any enclosed public space an offence punishable by law.¹⁷³ Moreover, many inmates complained that this poses a serious health hazard to the non-smoking population in the ward and one such complaint to the Commission came from a remandee suffering from asthma, "They smoke continuously. If you come to the ward you can see that we don't have any light, fan or windows inside the ward. It's hard for me to stay in that smoke."

3. Special diets served in prisons

The special diet in prisons is provided to foreign nationals who are unfamiliar with and likely unable to eat the local cuisine due to various reasons, prisoners who are suffering from diabetes and other ailments that require a specific diet plan, as well as prisoners who deviate from their ordinary diet to observe a religious observances.

As per Section 222 (2) of the SRs, although upon admission all prisoners are placed under Dietary Scale A [Annex 8.2.], amendments can be made if the MO deems that Dietary Scale B [Annex 8.2.] is more desirable with regard to the prisoner's "health, the circumstances in which the prisoner lived and the diet to which he[/she] was accustomed before his[/her] admission to prison."¹⁷⁴

In addition, Section 222 (4) states that a prisoner who is a vegetarian on religious or other ground shall be given a vegetarian diet, throughout the term of his imprisonment.¹⁷⁵ Section 222 (6) (a) (i) states that every prisoner who belongs to a religious denomination which celebrates Christmas, Hindu New Year, Wesak or Hadji may be given a diet different from his/her ordinary diet on the day of the festival with the approval of the Commissioner of Prisons.¹⁷⁶ The DSO too contains provisions for Buddhists observing "Atasil" on Sundays and

¹⁷³ National Authority on Tobacco and Alcohol Act, No 27 of 2006, s 39, "(1) No person shall smoke or allow any person to smoke any tobacco product within any enclosed public place.

(2) Any person who being the owner, occupier, proprietor, manager, trustee or person in charge of any enclosed public place shall ensure that no person smokes any tobacco product within any such enclosed public place.

(4) Any person who contravenes the provisions of subsections (1) and (2) shall be guilty of an offence under this Act, and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding two thousand rupees or to imprisonment for a period not exceeding one year or to both such fine and imprisonment."

¹⁷⁴ ibid r 222 (2).

¹⁷⁵ ibid r 222(4).

¹⁷⁶ ibid r 222 (6) (a) (i).

on Wesak, and Hindus observing partial fasting on Sundays to have a different diet¹⁷⁷ provided that the prisoner is not in the Penal Stage, in Hospital, under medical observation or under a punishment affecting the diet¹⁷⁸. Also, Hindus celebrating Hindu New Year, Christian prisoners who wish to fast for Christmas and observe the Lenten Fast and Muslims celebrating Hadji and Ramazan Fast, are entitled to a different diet.¹⁷⁹ The Commission observed that the prison authorities in PCP, BRP and KRP had provided the Muslim inmates who were fasting during the month of Ramadan with the necessary rations and the facilities to prepare food for themselves in their separate ward.

The foreign nationals held in NRP CRP, MCP and WCP, all stated that foreign nationals are given a special diet but many of them had grievances regarding the quality and nutritional value of the diet they were provided. A foreign male remandee in CRP stated that, “every day I have to eat two chicken pieces and one piece of fruit and two bananas and this is not enough for me, to be given as a foreigner, not enough vitamins.”

As for the special diet given to prisoners suffering from diabetes, Schedule I of the SRs and the Diet Distribution under Dietary Scales A & B in the DSO¹⁸⁰ are very specific as to the meals given to the diabetic vegetarians and diabetic non – vegetarians [Annex 8.3.]. Almost all prisons provide a special diet for inmates suffering from diabetes. At WCP the Commission

¹⁷⁷ DSO 1956, ss 607, 616, 608, “Subject to the provisions of D.S.O. 609, a prisoner who is a Buddhist by religion and who gives to the jailor timely notice of his desire to observe “Atasil” on Sundays will be allowed a vegetable curry (potatoes) in lieu of beef or dry fish (as the case may be) for the midday meal and tea and sugar in lieu of his usual evening meal”; “All Buddhist prisoners will be allowed the following for Wesak: -(b) prisoners wishing to take “Atasil” will be allowed tea and sugar in lieu of the evening meal and a vegetable (potatoes) in lieu of beef and dry fish for the midday meal”; “Subject to the provisions of D.S.O. 609, a prisoner who is of the Hindu religion and who gives to the jailor timely notice of his desire to observe partial fasting on Sundays will be allowed, in addition to the dietary concessions referred to in D.S.O. 607 to have his morning ration of bread, if any, served with his evening meal.”

¹⁷⁸ ibid s 609.

¹⁷⁹ ibid ss 617, 612, 613, 618, 619, “All Hindu prisoners will be allowed the following facilities for Hindu New Year: -

(b) prisoners may be allowed vegetables (potatoes) in lieu of beef and dry fish for the midday meal, and bread, tea and sugar in lieu of morning and evening meals which will be served together in the evening”;

“ All Christian prisoners may be allowed the following facilities for Christians; (b) prisoners who wish to fast may, on application, be granted the following: - tea and sugar in lieu of the evening meal and vegetable in lieu of beef and dry fish for the midday meal on the 24th December”;

“Every Christian prisoner who expresses a desire to observe the Lenten Fast may be allowed the following for seven Fridays prior to Easter in regard to food: *Morning meal*: Tea and sugar in lieu of usual morning meal, *Midday meal*: Vegetable (potatoes) in lieu of beef, *Evening meal*: Tea and sugar in lieu of evening meal”;

“All prisoners professing Islam will be allowed the following facilities for Hadji: - (b) to have tea and sugar in lieu of the morning meal and vegetable (potatoes) in lieu of dry fish, dhal and plantains for the midday and evening meals respectively”;

“Every Islam prisoner who expresses a desire to keep the Ramazan Fast may be allowed the following facilities in the month of Ramazan: - (b) midday meals to be served in the evening to be part-taken of in the ward after sun-set. (c) bread, tea and sugar in lieu of evening meal to be eaten in the ward after sun-set or to be kept overnight according to custom and eaten together with the morning meal the following day which is served between the hours of 0330h and 0500h Tea and sugar is issued in lieu of morning meal. ”

¹⁸⁰ ibid s 511.

was informed by the Diet Roll Keeper (DRK) Branch that there were three other diets given upon the MO's recommendation, namely; the High Protein diet comprising of:

- 85g of dhal,
- 56g of meat,
- 28g of *mallum*¹⁸¹,
- 56g of tomato,
- 56g of *kathurumurunga*¹⁸²,
- One boiled egg and
- A20g packet of milk powder
- A red rice diet and a bread diet.

In WCP, the inmates stated that a special diabetic diet daily consists of:

- One egg,
- Two bananas,
- A piece of papaya,
- A small bundle of green leaves like Gotukola or Kankun
- Two small onions,
- Two chilies
- Small pepper packet; and
- A packet of non – fat milk given every twenty days.

However, convicted male prisoners in POPC alleged that no such special diet was provided by the administration for diabetic prisoners. A convicted inmate from ARP alleged that he was not being given the special diabetes diet as a form of reprisal by the MO in the PH in clear violation of Section 222 (2) of the SRs. Prisoners have suggested that inmates with dietary requirements should be provided with better quality of food.

In addition, prisons provide a transfer diet as specified in Schedule I of the SRs [Annex 8.2.], and the DSO too states that meals should be provided when transferring prisoners from one prison to another¹⁸³. The Commission received some complaints from prisoners of both genders from PCP, KRP and WCP who alleged that they are only provided the morning meal

¹⁸¹ A salad of green leaves.

¹⁸² *Sesbania grandiflora/hummingbird/agati/hummingbird tree*

¹⁸³ ibid ss 526 - 528, "Prisoners transferred from one prison to another will be given a cooked morning meal drawn from the cooked meal contractor at the prison of dispatch and dieted and given normal meals or cooked meals for the noon and evening meal as may be convenient and economical at the prison of destination, if the journey is completed by midday.";

"When the journey is not completed by midday, a substitute for the midday meal consisting of 10 Oz. bread, chilly sambol and two ripe plantains will be drawn from the Contractor and carried in a suitable receptacle for each prisoner. In addition, a cup of hot tea will be purchased by the officer-in-charge of the escort for each prisoner on the journey. A cooked meal will be drawn for each prisoner at the prison of destination.";

"If the journey is not completed even by 1700h. and the escort is not likely to reach the destination till a late hour, 4 oz. bread (to be taken from prison of dispatch) and a cup of hot tea or coffee purchased on the way will be issued to each prisoner."

when they are taken to courts and have to stay hungry until they return to prison in the late afternoon or evening. When this issue was raised during the Commission's meeting with the SP of PCP, the SP stated that the prisoners are provided with meals from the court canteen or from a prison en route to the court.

4. Quality and quantity of food

4.1. Findings on the quality of food

According to international standards, SMR 35 states that the physician or a competent public health body should regularly inspect and advise the prison director on the quantity, quality, preparation and service of food.¹⁸⁴

The following provisions of the SRs complement the SMR:

- Section 55 of the SRs states that "the MO shall daily examine the food provided for the prisoners, in order to see that it is of proper quality, and shall enter in his journal any defect in quantity or quality which he may note."¹⁸⁵
- Sections 25¹⁸⁶ and 97 of the SRs respectively state that it is the duty of the SP and the Jailer to frequently inspect the good quality of the food and taste a sample of the food to ensure quality.
- Section 95 of the SRs states that the Jailer should also oversee the distribution of the prisoners' meals.¹⁸⁷
- Section 538 of the DSO states that "unremitting supervision should be exercised over the drawing, preparation and distribution of prisoners' food¹⁸⁸; and
- Section 539 states that a suitable officer should be specially selected to supervise work in the kitchen.¹⁸⁹

The Commission observed that although no daily inspection of food was carried out by the MO in the prisons visited as per Section 55 of the SRs, all prisons visited stated that the CJ carried out the food tasting of all three meals and enters on record whether the quality of the prepared meal was satisfactory or not as per the Sections 25 and 97.

In WCP, the Commission observed that when the sample tray was brought to a senior officer for tasting and quality check, the officer hesitated. The member of the Prison Study team was

¹⁸⁴ SMR 2015, r 35.

¹⁸⁵ SR 1956, r 55.

¹⁸⁶ ibidSR 1956, r 25.

¹⁸⁷ ibid r 95.

¹⁸⁸ DSO 1956, s 538, " Unremitting supervision should be exercised over the drawing, preparation and distribution of prisoners' food. Particular attention should be paid to the following points: -

That all articles supplied are wholesome;

That they are properly cleaned and cooked. In particular rice should be well washed, and all vegetables and dry fish well cleaned before cooking."

¹⁸⁹ ibid s 539.

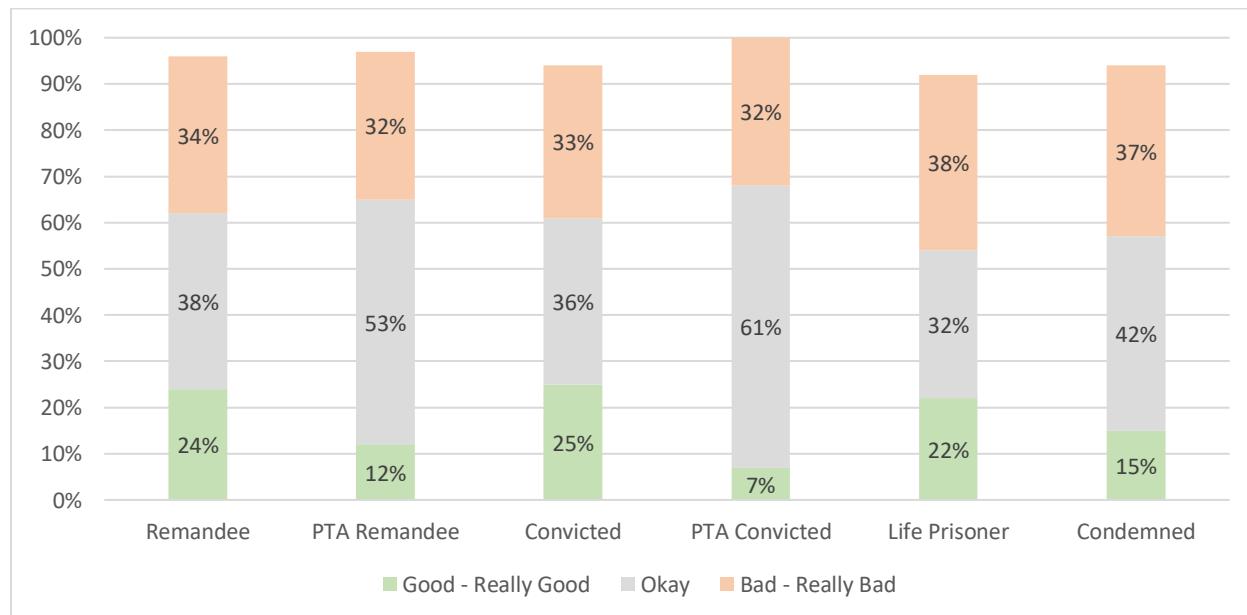
intently watching to see the process of quality check and the senior officer having noticed this, proceeded to dip the spoon in one vegetable curry and dhal curry and placed the spoon in his mouth to taste it. In total there were two vegetable curries, dhal curry, fish curry, red rice and white rice. The officer did not inspect the rice or fish curry.

In MCP, it was brought to the notice of the Commission that the CJ duly tastes the food prepared every day, but he does not taste every single item prepared in the kitchen, but merely tastes a spoonful of one of the curries prepared that day for the inmates. In NRP, BRP and NMRP, the Commission observed SPs and CJs conducting the daily tasting in a similar manner. According to a convicted inmate in POPC:

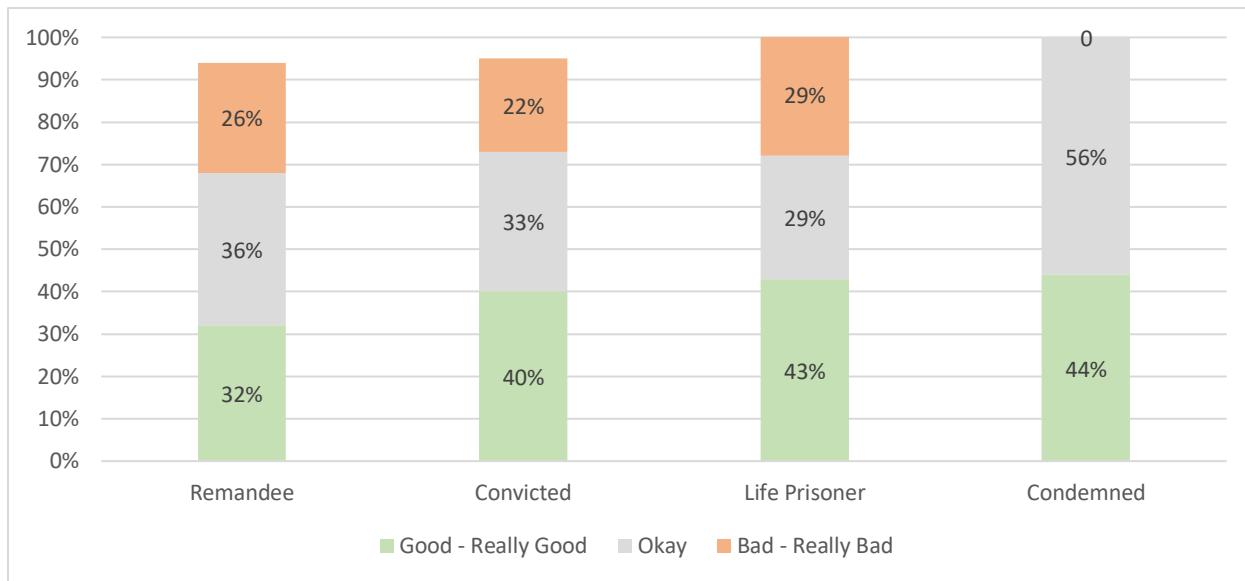
“That ration sample that they show the SP sir... they cook it well and place the good part on top, like the oily [part of the meat]. In reality the food that is available in the afternoon doesn't have salt or chili, it's totally watery.”

In the study, 33% men and 24% women of the total sample in each category responded that they consider the food to be bad or very bad. Additionally, 38% of men and 36% of women stated that they consider the food to be average. The exception to this is ARP where most of the interviewees stated that they appreciate the quality of the food given by the prison. The reason for this exception is that the kitchen ‘bass’ or the head cook at ARP is a former chef who uses his training and knowledge, which results in better quality meals. For example, a convicted woman who was temporarily being held in ARP stated, “here at [ARP] we are getting better food than Welikada. There, [WCP] we don't get food that we can eat”

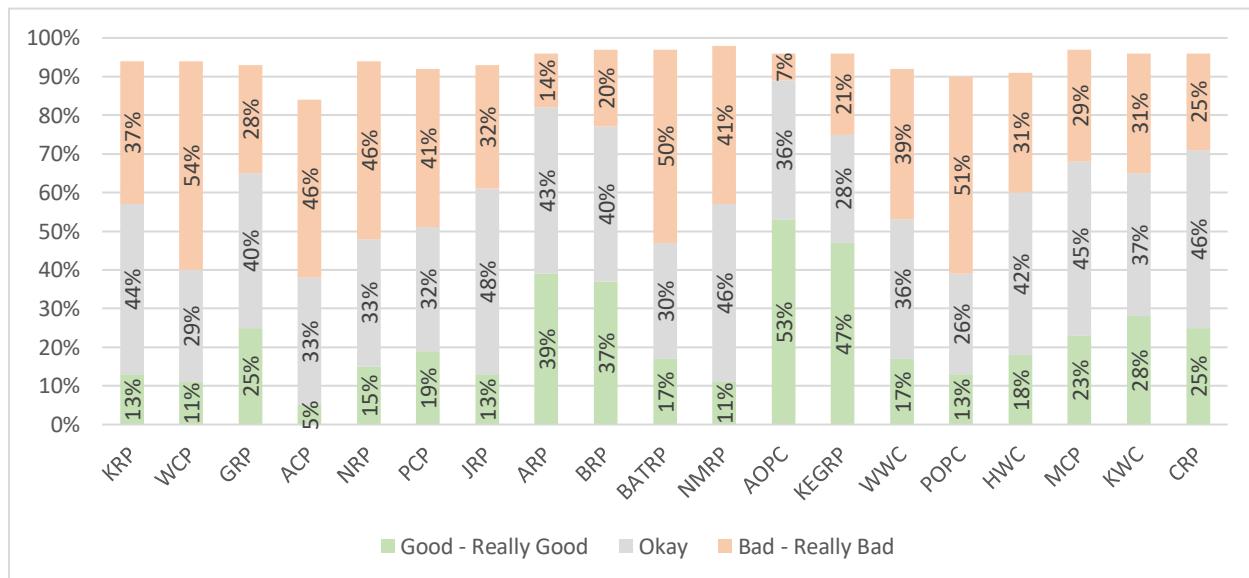
Graph 8.1 – Male respondents on the quality of food across prisoner categories



Graph 8.2 – Female respondents on the quality of food across prisoner categories



Graph 8.3 – Male respondents on the quality of food across prisons¹⁹⁰



Many prisoners both male and female described prison food using terms such as 'bad', 'watery', and containing 'no salt or chilies'. The fish curry was often labelled as being 'smelly', the piece of chicken served to them being 'too small' etc. indicating that they did not find the

¹⁹⁰ This data is corroborated by the qualitative interviews where prisoners claimed the food is relatively better in ARP compared to other prisons, especially that of WCP. The Commission in its visit learned that the *kitchen party* Bass at ARP is a former chef who has had years of experience as a professional cook in local and international hotels. As stated above, prisoners also claimed that the officer in charge of the *Kitchen Party* was knowledgeable about cooking.

food appetizing' and they consumed the food served in prison merely to survive. Inmates alleged that the necessary spices and condiments, such as chili and salt, according to the amounts as prescribed in the Diet Distribution of the DSO as well as in Schedule 1 of the SRs [Annex 8.2.] were not used in the food preparation. As a condemned man from WCP stated:

"Food is terrible. Go and check it Miss. Check whether the dhal curry has dhal in it. Just casually go in a food queue and check it Miss. Check if there are chilies in fish. There is nothing there. All that they serve is rice and water."

A female remandee from KRP alleged:

"We don't even get plain tea properly... there are cockroaches in it. Recently, there was a centipede in the tea. There are endless amounts of blue bottle flies in the food. Sometimes when it rains, the food is kept outside because they claim they don't have the keys [to the gate] to bring it inside and so they keep the food outside. They lay out a polythene sheet, a dirty polythene sheet, to cover the food. Water drips from it."

All prisons visited served either fish or chicken to all prisoners for both lunch and dinner. The DSO is very specific as to the provision of fish, whereby Section 523 states that "all fish supplied, whether fresh or dried, shall be free of gills, fins, scales, tails, heads, entrails and other unconsumable parts."¹⁹¹ Despite such explicit provisions in place, prisoners alleged that the stocks of fish/dried fish purchased are spoilt and emit a foul odor, which makes the meal unappetizing/inedible. A condemned male prisoner from WCP alleged that, "They bring us spoiled fish... it smells really bad. Officers should think whether it's possible to bear the smell before they accept this fish. If it is a good officer, he sends it back and asks them to bring [a] good [stock of] fish." Male and female prisoners from different prisons stated that they experience allergic reactions in the form of skin rashes once they consume the fish due to the unhygienic manner in which it is prepared and many stated that they refrain from eating fish as it makes them itch. A convicted male prisoner from BATRP said, "When they cook sprats and dry fish, it stinks so badly that we can't even keep it near us." A female remandee from NRP said, "At times the fish curry smells so bad that you can't even get close to it, let alone eat it. You can't eat that fish. We only get good fish rarely." The Commission during a visit to WCP noted completely frozen fish being cut into pieces and cooked, without being thawed. When members of the Prison Study team touched the fish, it was found to be very hard and it was noticed that many of the frozen pieces were covered in ice, odorless and greyish in color. The cooking of fish (and meat) with ice in them could lead to parts of fish/meat being not evenly cooked inside and out which, in addition to the effect on the taste, could have adverse health impact, such as food poisoning.

The inmates from prisons in different parts of the country allege that the food served is largely inedible and unhygienic. Almost all prisoners of all categories at every prison visited as part of the study stated that on the days of the Commission's visit to the prison the

¹⁹¹ DSO 1956, s 523.

standard of food given was much better than on other days, which illustrates that prisons do have the ability to provide the inmates with a better, wholesome meal.¹⁹²

The Commission could identify a few patterns with regard to the quality of food served to both male and female prisoners of all categories. The primary point to note is that prisons do not have cooks and hence assign prisoners with no experience of cooking meals on a mass scale or knowledge of nutrition to work in the kitchen. Given the stereotypical demarcation of gender roles in Sri Lanka, it is likely that most male prisoners would not have undertaken many tasks in the kitchen prior to being assigned to the kitchen party.

The majority of inmates who spoke with the Commission were of the opinion that it is futile to complain to the authorities regarding the unsatisfactory conditions of the diet served, either due to their complaints not being heeded or fear of facing reprisals. According to a 2002 ICRC report prisoners of Bogambara Prison alleged that they were beaten when they complained about the bad quality of food.¹⁹³ A condemned inmate at PCP mentioned that:

“...In terms of food, it’s like this...people don’t make a fuss about food because if you speak about a problem in relation to food today, you wouldn’t know to which prison you will have to go to with your belongings the following day morning.”

The statements of the inmates on the quality of the food received are validated by the statements of the prison authorities. For example, NMRP CJ at the time Mr. Vajira Abeydeera stated that:

“In prison we cook for thousands of prisoners. People who know nothing about cooking are cooking in a very limited facility and a very cramped place. So of course, the food is not going to be tasty. Of course, it’s not going to be like food from home. Of course, it’s not going to be evenly cooked.”

The SP of CRP, SSP Mr. K. Bandara similarly stated:

“We need cooks to cook. Not remandees who volunteer or work party prisoners who know nothing about food. Cooking for larger groups like in prison has to be strategic. You can’t just cook pots and pots of rice for the sake of cooking.”

WCP SP, SSP T. I. Uduwara expressing the same sentiments stated that:

“The reason people have to bring food from home unnecessarily is because the food in prison is tasteless. It’s because we have people who know nothing

¹⁹² The visits to each prison in the sample was unannounced, since the HRC would spend on average four or five days in each prison by the second or third day the prisoners stated that the food they received has vastly improved.

¹⁹³ H.G. Dharmadasa, *Rights of Prisoners in Sri Lanka State of Human Rights* (2003).

about cooking, who cook for thousands of prisoners. Just recently I had to call the kitchen officer and teach him how to cut 'batu'. Seeing how they have chopped the 'batu gedi', made me want to throw up. How can prisoners eat this food then?

The quality of the food is terrible because they just don't know how to add spices, how to chop the vegetables, how long to cook etc. Now how do I select people for the kitchen, I just ask them what you did, before you came here. Then they tell me, 'I was a cook,' I was a cook's assistant' but later you find out that he was a carpenter's assistant. He just wanted to get into the kitchen so that he can steal some vegetables and spices and sell it to other prisoners, or he can cook something tasty for himself to eat.

How do I select officers for the kitchen? I try to find someone I can trust. Someone who has proven they are trustworthy. We must have professional chefs. In other countries I have seen that they outsource the cooking to professional chefs. They come and do the cooking and plan the meals."

SP Uduwara further suggested that prison officers should be provided food at the prisons, and be served the same food that is served to prisoners, which in his opinion would result in better quality of the food as well as an increase in the officers' efficiency, as the officers would not have to travel outside of the prison for their meals.

4.2. Findings on the quantity of food

A common grievance expressed by convicted male prisoners in Work Camps - HWC, POPC, KRP, WWC and ARP - was regarding the inadequate quantity of food served. At POPC a recurring allegation was that the food served was not enough to satisfy their hunger as these prisoners said they have to engage in manual labour from early morning until 1530h with intermittent breaks for tea and lunch. During the interviews, the prisoners revealed that the piece of bread they receive in the morning was very small and was not enough to stave off hunger until lunch. Almost all prisoners interviewed at POPC and WWC stated that the inadequacy of food was one of their main concerns. Prisoners have suggested that the food provided be of good quality and quantity and adhere to a pre-set standard.

With regard to the chicken served, the prisoners from WCP, NRP, CRP and POPC alleged that the piece of meat they receive is very small. As one prisoner from NRP said it, "sometimes they'll give chicken... they'll cut the chicken to one thousand pieces and give you this bit." In the preparation of fish and meat, many local and foreign prisoners of all categories and of both genders stated that the piece of fish/meat they receive is extremely small.

To ascertain whether the prisoner is furnished with the prescribed quantity of food as set forth in the PO and the DSO, Section 225 (1) of the SRs allows for the inmate who wishes to complain about the food provided to him or the quantity of food to make a request to the officer in charge of the party who shall at once summon the Jailer or the Deputy Jailer to

weigh or measure the diet in the presence of the prisoner as soon as the diet is served.¹⁹⁴ Contrary to the provisions outlined in national law, inmates of POPC alleged that they faced reprisals in the form of transfers when they complained of the insufficient quantity of food to prison officers.

It is also the duty of the Jailer as per Section 94 of the SRs to ensure that the proper diets are drawn, cooked, and issued to every prisoner in his charge, according to class and the proper meal time and to test the diet of any prisoner when summoned to do so in his/her presence.¹⁹⁵

5. Prison kitchen

The conditions within which the preparation of food in the prison kitchens is undertaken stand in stark contrast to the established domestic as well as international rules pertaining to the preparation of food. Section 16 of the SRs states that the SP should inspect the kitchen at least once a month¹⁹⁶, and Section 49 of the SRs states that the MO of the prison shall visit every part of the prison once at least every week and inspect the quality of the provisions¹⁹⁷ and the quality of water that is used for cooking¹⁹⁸.

The Commission's observations of the conditions in which the food was prepared include: the kitchen floor was always damp and muddy with flies swarming with cats and rats roaming around the kitchen area. In many prisons, including WCP, MCP, KRP, ACP, WWC, NRP and BATRP, as well as in the kitchen area at WCP PH, the cooked food was kept without cover thereby giving easy access to flies, rats and cats and allowing dirt particles to mingle with the food.

The issue of flies was raised with the SPs of NRP and BATRP during the SP meetings with the Commission, at which both SPs accepted that it is an issue with which they have to hastily deal. It was observed in JRP that mosquito nets were being used to cover the cooked food to protect it from flies and other pests. At NRP, inmates were seen taking baths inside the kitchen, which was brought to the attention of the SP who took immediate action. Bathing

¹⁹⁴ SR 1956 r 225 (1).

¹⁹⁵ ibid r 94.

¹⁹⁶ SR 1956, r 16, "He shall inspect the yards, cells, cook rooms, latrines, and every part of the prison at least once a month, at uncertain times; and he shall take care that any prisoners who have any complaints or applications to make are allowed to make them, subject to the provisions of the Prisons Ordinance, and these rules and any other written law applicable to the prisons in Ceylon. The Superintendent shall hear and decide all such complaints."

¹⁹⁷ SR 1956, r 49, "He shall visit every part of the prison once at least every week, and daily when epidemic disease exists in the neighbourhood, and shall enter in his Journal the results of such inspection, recording any want of cleanliness, drainage, warmth or ventilation, any bad quality of the provisions and insufficiency of clothing, or any other cause which may effect the health of the prisoners."

¹⁹⁸ ibid r 50, "He shall ascertain whether the water is pure and wholesome, and whether there is an abundant supply for drinking, cooking, and washing. He shall especially note all defects of drains, latrines, and the conservancy management generally of the prison...The result of all his examination shall always be recorded in his Journal."

inside the kitchen seemed to be a common practice among the kitchen party inmates as one inmate of the WCP kitchen party revealed to the Commission that they take baths inside the kitchen after cleaning the premises since it is a more convenient option than going back to the ward and showering.

The Commission could also observe that prison kitchens lacked proper ventilation required for cooking and proper utensils for the preparation of a large quantity of food. A recurrent observation was that the prison kitchens were in dire need of renovation. The walls of kitchens in HWC and WCP PH were blackened with soot as food is cooked in most prisons using hearths with firewood that make it hot and humid inside and disrupt proper ventilation. In KRP, the Commission observed that the smoke and smell of the prison kitchen in the male section being directly carried by the wind to the female section which was situated right next to the kitchen, on the other side of the wall. This caused respiratory discomfort to the female inmates and their children, officers, and the Prison Study team members who were visiting at the time.

In ACP it was brought to the Commission's notice that even though a new kitchen area with pressure cookers and burners was available, the administration was using the old, firewood hearths since it was the cheaper option. It was also observed that the inmates would be required to stand very close to the fire in order to stir the pots, without any protective gear to prevent any accident/hazard. In WCP, the Commission saw an inmate emptying boiling water to the ground from a big steam pot whilst placing one leg away from the water, to prevent from getting burnt, while the leg he was standing on was in close proximity to the cascading boiling water.

The inmates who worked in the kitchen in ARP, NRP and JRP stated that kitchen utensils, particularly the pots and pans were old and needed to be replaced. One inmate in ARP stated that the inmates assigned to cook had to cover the holes in the pots with coconut husks and plaster it with left over pieces of bread in order to be able to utilize the pots for cooking; they had to repeat this task every day as the improvisation would hold only for one cooking session. In KRP, the Commission observed inmates cutting vegetables with sharpened pieces of iron used as substitutes for knives.

All prisons visited by the Commission had a separate tank[s] for the purpose of washing the victuals and the utensils. However, the team observed that the drains of these tanks were clogged on some occasions. In GRP, the tank used to wash vegetables and meat was clogged and overflowing. When the Commission was undertaking inspections at CRP, the place where the food was dumped lay on the pathway to the wards and it could be seen that the drains were clogged with the food waste, which emitted a foul odor. At PCP, it was observed that the bed of the tank used to wash vegetables was not clean and a prisoner was standing in ankle-deep water trying to unclog an overflowing drain that was emitting a foul odor in the area where the vegetables were washed. When this issue was raised by the Commission during the meeting with the SP of PCP, the SP stated that the tanks and the boilers in the kitchen have not been cleaned for years and the prison administration has in fact complained against the contractors who have not undertaken the periodical cleaning.

6. Food wastage

Since prison food was said to be of low quality by many inmates who have stated that it is not edible, it is likely that food wastage is high. At prisons such as MCP and CRP, the Commission observed a mound of food thrown into the garbage area, attracting flies and emitting a foul odour. Remandees would often state that they eat the food they receive from family visits and hence do not eat prison food. As the prison prepares food for the entire prison population without reducing rations proportional to the number of remandees receiving food from visitations as they do not know which prisoners will receive visits, it is inevitable that much food goes to waste. This was affirmed by prison authorities who informed the Commission that there is no efficient procedure to monitor the number of remandees receiving food through visits, and proportionally reduce the daily quantity of food prepared. Since dinner is provided around 1530h – 1600h in all prisons, some inmates complained that their dinner is spoilt when they consume it hours later, once again resulting in food wastage.

Prison administrations highlighted that they wish to restrict the amount of food that inmates are allowed to accept through family visits, in order to curb the supply of contraband being smuggled into prison, and also because many officers and resources are required to conduct searches of food items that prisoners are allowed to accept¹⁹⁹. However, to restrict the food received via visitations without taking steps to rectify the primary reason the prisoners depend on food from outside, which is the poor quality of food available inside prison, would only result in adversely impact prisoners' access to nutritional food. If the food provided by the prison reflected acceptable standards of hygiene, preparation and quality, the wastage of large quantities of cooked food could be prevented and need the for many officers to sift through food received during visits would be minimized.

7. Food procurement and allegations of corruption

For 2018, the estimated government allocation for 'Diets and Uniforms' for all prisons in the island was Rs. 966.094 million, a decrease from Rs. 1,085 million in 2017.²⁰⁰ In comparison, the daily average strength of convicted and remand prisoners increased from 19,278 in 2017 to 20,384 in 2018.²⁰¹

Section 224 of the SRs states that the food should be weighed or measured daily in the presence of the Jailer or Deputy Jailer, and occasionally in the presence of the SP and of the MO, in order to avoid any fraud regarding the rations and that prisoners should receive the full amount of the rations to which they are entitled.²⁰² Section 2 of the SRs states that it is the duty of the SP to inspect and countersign the Ration Return Book.²⁰³ The DSO is very

¹⁹⁹ For a detailed discussion, please refer chapter Contact with the Outside World.

²⁰⁰ Department of Prisons, Budget Estimate 2018.

²⁰¹ DOP, *Prison Statistics of Sri Lanka* (Vol. 38 – 2019), p 44

²⁰² SR 1956, r 224.

²⁰³ ibid r 2, "He shall on each visit inspect and countersign...the Ration Return Book."

specific as to the rationing of food so as to avoid any fraud, misappropriation or corruption concerning the rations.²⁰⁴

A convicted male prisoner at POPC alleged corruption among prison officers and stated, “the kitchen is the worst. If the rations are passed for 300 people correctly, we can even cook like for a wedding. It means that they don’t provide it properly.” A male convicted prisoner from KGRP made a serious allegation with regard to the fish they are given to consume and said:

“There is a fish type called *hujja moru*. Normally people do not eat it and do not even use that for the dry fish. It has a bad smell... that fish was cooked on the day you came here as well. It is so difficult to cook it, as the fish breaks into small pieces. ... it has a bad smell... They do not care about the food quality because of the corruption among officers. So, they just approve it and send it here as they get their share... administration happens without any proper procedures and this allows officers to do whatever they want.”

Moreover, it was alleged on many occasions by the prisoners that prison officers take spices, condiments as well as chicken for their personal use, which results in the said items not being used when cooking for the prisoners. A male life prisoner in WCP made a serious allegation based on what he claims to have seen in his time in PCP and further revealed that although the prisoners are entitled to get a piece of chicken/fish weighing 56g, the piece they actually get has “about three to four grams”:

“In Bogambara I saw with my own eyes at around 1000h on a day, I was to go to clinic because I was waiting near the gate since 0900h as there was a delay. Rations were brought by a woman. She brought fish. The fish was cut and a piece was set aside for the SP. A piece was set aside for the Chief Jailor. The Jailor passing rations said, “this piece is for me”. The officer in charge of the gate, the officer who passes, the one who is sitting in a chair, he said, “cut and keep aside my piece”. Of food that is brought for us from the outside through tenders, the food for the day, when the rations are passed, the officer who does so gets a bag of vegetables and Rs. 2500. And then what do you do Miss, you pass whatever it is, whatever dirt it is.”

Although allegations were made by prisoners alluding to fraud, misappropriation and corruption concerning rations, the Commission is not in a position to make any observations on the issue as this was not within the scope of the study and requires a separate, detailed investigation which would have to entail a thorough scrutiny of the documents, parties and processes involved in food procurement in prisons.

When the issue of the unsatisfactory condition of food was raised by the Commission during the interview with the Prison Focal Point at MOJ Mr. Bandula Jayasinghe, it was revealed that, “the Ministry has the idea to break the system into controllable small units and food to be handed over to the Army or Navy” or to a private sector. However, privatizing or militarizing

²⁰⁴ DSO 1956, ss 529 – 541.

the provision of food is not the answer to the issues raised in this chapter, as it will not necessarily address the systemic factors, such as the lack of cooks, the unhygienic conditions of food preparation and alleged corruption, which adversely impact the quality and quantity of food.

8. General observations

The Commission was informed by the prisoners in all prisons visited, except ARP, that the quality of the food was generally bad. The prisoners would commonly describe the food as being watery without any spices and something they would consume solely for their survival. However, on the second and third days of the Commission's visits to a prison, the inmates of that prison often stated that the food served to them was of better quality as the authorities expected the Commission's visit. This indicates that when supervision of prisons increases, the quality of food prepared for prisoners can improve.

A common grievance of the inmates in work camps was that the quantity of food given was not adequate compared to the amount of manual labor the inmates engage in every day. The Commission observed that all prisons distributed a special diet for foreign inmates and diabetic inmates. A common grievance among foreign inmates was that their diet did not meet nutritional requirements. It could be observed during inspections of the prison kitchen that meals were prepared in unhygienic, unsanitary conditions and it was observed in some prison kitchens that the prepared food was exposed to flies, rats, cats as well as dust and other germs. The kitchen equipment such as pots, pans and knives were observed to be in bad condition, hence sometimes exposed the inmates to hazardous work conditions.

The Commission did observe that in some prisons a plate of food was sent to the SP/CJ for inspection. However, the Commission did not observe the MO inspecting the meals as required by national legislation. The inmates also alleged that corruption by prison officers takes place in food rationing, which further contributes to the poor state of food in prisons. A large quantity of food was observed being thrown out in some prisons thus resulting in a wastage of resources and contributing to inefficiency of the system.

9. Water, Sanitation & Personal Hygiene

“Even when I was in the cell, they treated me like a dog who is caged inside and is unable to use the toilet. I told this even to ASP. When they are building a cell, it is a must to have a toilet inside. My personal opinion is, no matter what the crime an individual has committed, they should respect and treat him as a human being.”

PTA Prisoner, ARP

1. Introduction

In an environment where persons are deprived of liberty, they find themselves completely dependent on authorities to meet their basic needs and the failure to ensure access to water and sanitary facilities will have an adverse impact on the physical and psychological well-being of prisoners. Sanitary conditions of the facility as well as the means of maintaining their own hygiene directly affect the conditions of prisoners' detention, and therefore the prison is required to maintain certain minimum standards stipulated in international law.

2. Water supply

The SMRs recognize the provision of water to detainees as pivotal to the maintenance of personal hygiene, for which they have to be furnished with water required to keep their selves clean.²⁰⁵

The ICRC recommends that water supply to prisons be continuous²⁰⁶, even during peak hours, to the extent that it covers the needs of drinking water, preparation of meals, maintenance of personal hygiene, operation of the sewage and waste disposal systems and cleaning of premises²⁰⁷. It vests responsibility on the prison administration to ensure the quality and sufficiency of the water provided in line with World Health Organization (hereinafter referred to as WHO) standards.²⁰⁸

The Commission noted that the prisons visited had different arrangements to supply water to detainees. In some prisons, water points along with sanitation facilities were installed inside the wards as in the Chapel downstairs wards at WCP. In certain others, water points were installed outside while the sanitation facilities were available inside the wards, such as in the Chapel upstairs wards. Where there were female prisoners, water points and sanitation facilities were available separately for their wards. Likewise, young offenders either had access to water points inside their wards since they were not allowed to use the

²⁰⁵ SMR 2015, r 18(1).

²⁰⁶ Pier Giorgio Nembrini, *Water, Sanitation, Habitat and Hygiene in Prisons* (ICRC, 2005) 35.

²⁰⁷ *ibid* 29.

²⁰⁸ Pier Giorgio Nembrini, *Water, Sanitation, Habitat and Hygiene in Prisons: A Supplementary Guidance* (ICRC, 2012) 45.

facilities outside, as in HWC, or were allowed to use water points outside when adult prisoners were locked inside, as in BATRP. Instances of them having to use the water points with adult prisoners were found in GRP.

A common complaint of inmates of all prisons was that the water supply is not continuous and interruptions in supply are frequent. In most of the prisons visited, the water tanks for the use of inmates were filled intermittently maximum two to three times a day. The situation in JRP was different where the inmates alleged that they received water only in the morning for less than an hour. In CRP, the inmates alleged that the water pump is not in operation during the specified times, exacerbating the inadequate water supply, and expressed their frustration at having to confront such difficulties regularly. On days the Commission was present the water supply greatly improved, as alleged by inmates from PCP and KRP. As an inmate from PCP stated:

“To tell you the truth, if someone from a higher authority visits here, they give us water properly just to show them. For instance, they give us water [throughout the day] to put on a show because you sirs and madams came here. We won’t get water [as much] if you madams and sirs didn’t come. We had water throughout the whole day yesterday. We only get water for two or three hours if no one comes like this.”

The inmates’ narratives indicate that the discontinuous water supply may not necessarily be an infrastructural defect, but is possibly limited deliberately for reasons unknown, disregarding the resulting discomfort and inconvenience caused to prisoners, as well as international standards on prison conditions. However, when inquired, the then SP PCP Mr. Senarath Bandara stated that the motor pump available at the time was not adequate to supply sufficient amounts of water to the prison, and therefore a new pump had to be acquired to fix to a water well to increase the water supply.

Water supply was also reportedly interrupted due to water shortages. Where water sources such as rivers, wells and lagoons were exploited for the purpose of providing water, detainees would suffer insufficient supply of water when the natural water sources were affected by weather changes. This was particularly highlighted in prisons such as AOPC and ARP where the interviewees said water shortages were experienced when ‘Malwathu Oya’ (Malwathu River/Stream) dries up. A similar experience was narrated to the Commission by interviewees from MCP, KRP, PCP and ACP who alleged they received less water during the dry season. When the issue was raised during the SP discussion with the SP of KRP, he stated that the water supply had greatly improved since then, as new wells were dug inside the prison premises as a solution to the interruptions in water supply.

The Commission was also notified of the water supply being disrupted by water cuts by interviewees from MCP, CRP, POPC, KRP and PCP. Yet, when the complaints received by the Commission from BATRP in relation to water cuts, allegedly occurring due to the bills not being paid, was brought to the attention of the SP during the meeting with the Commission, he assured that it was not the case. Where water was not pumped owing to power cuts, while the Commission was told that the respective prison administrations endeavoured to remedy

the situation by bringing water bowsers, as evident in the case of MCP, or having an alternative stock inside the prison in the form of barrels for storage of water as in the case of PCP, the existence of such contingency measures proved inadequate to meet the demands of the inmates during such circumstances. However, the allegation levelled at the administration in PCP by its inmates who did not receive water for four days, as pointed out during the meeting between the Commission and the SP, was reflective of an instance when bowsers were not brought to rectify the crisis.

The Commission was also informed of the quality of water failing to meet hygienic standards. Since water was obtained either directly from water sources, such as rivers, instead of pipelines, or because it was not subjected to a regular process of purification, it was often reported to be muddy and mixed with dust and other particles. This was reported to the Commission from NRP, GRP, KGRP and ACP where the detainees claimed that it was difficult for them to perform their day-to-day activities as a result of poor water quality. Both female and male prisoners from NRP alleged that the contaminated water they received directly from the lagoon meant their clothes could not be washed properly, despite considerable amounts of soap being applied. Inmates from ARP stated that the muddy water they received from the river increased the chances of them developing skin and hair problems.

3. Access to drinking water

The SMRs require drinking water to be made available to prisoners whenever they need it.²⁰⁹ The SRs place the duty on the MO to assess whether the water that is provided for drinking is clean and uncontaminated.²¹⁰ The MO is tasked with assessing whether an abundant supply of water is available for drinking and cooking.²¹¹

In almost all the prisons visited, the Commission observed that prisoners had the opportunity to either store drinking water in plastic bottles and cans, or in the case of remandees, to receive bottled drinking water from visitations or buy from the prison canteen where available.

Water points for the distribution of water existed in several forms. In ARP and in some wards at NRP and WCP, the prisoners collected drinking water from taps inside the ward. However, in most prisons, water was collected from a separate tank outside, and in some instances, such as in BATRP, a separate tank inside was used to store drinking water that was supplied by a separate water supply line. Inmates also had to use the same water that was provided to them, for bathing and drinking in some prisons, particularly where water was available for use inside the wards. Though this might expose them to the risk of contracting diseases, the inadequacy of infrastructural arrangements inside the prison for the fulfilment of basic needs compelled them to depend on such measures as evident from the accounts of inmates from BRP and CRP.

²⁰⁹ SMR 2015, r 22(2).

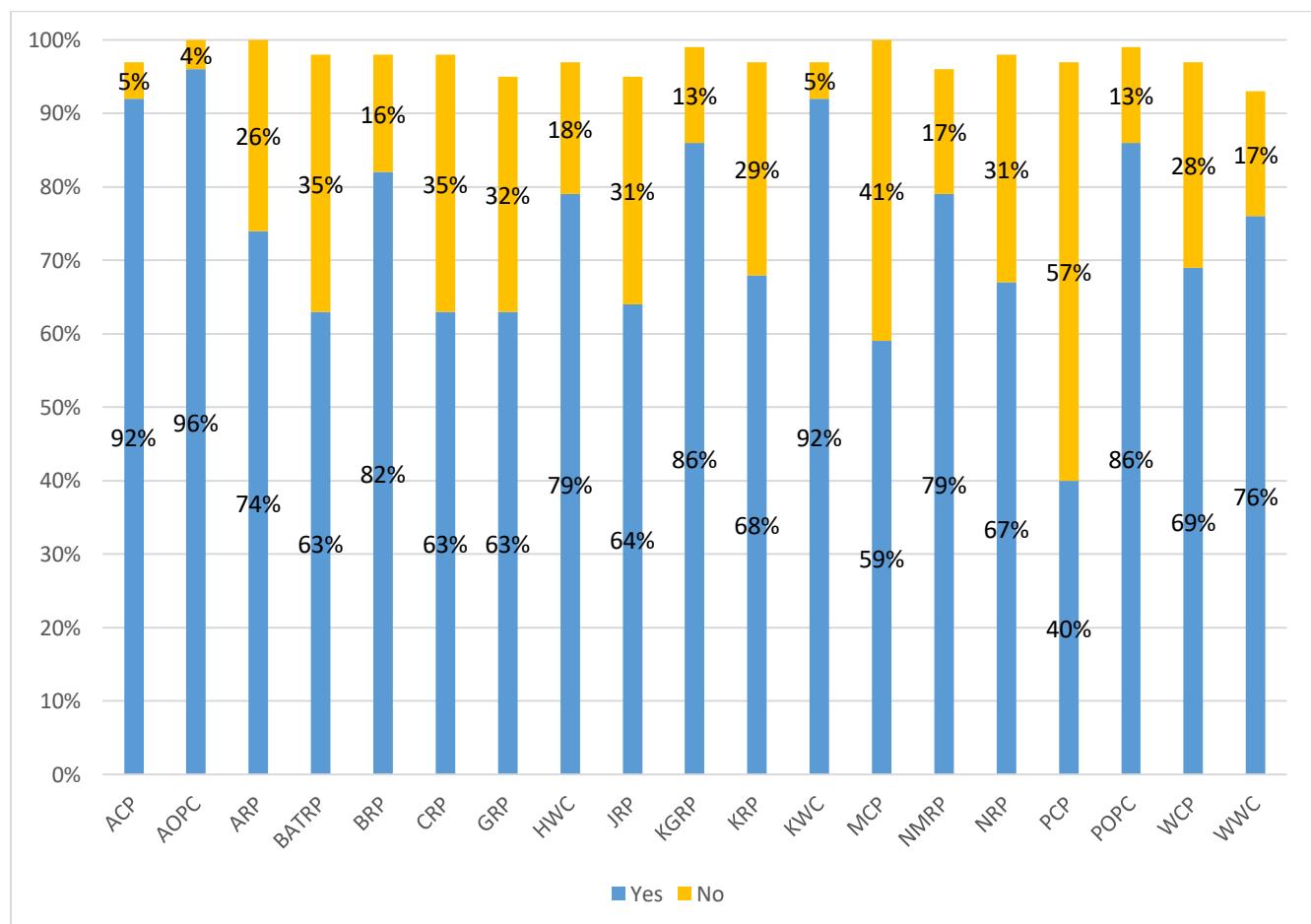
²¹⁰ SRs 1956, s 50.

²¹¹ *ibid*

The Commission noticed that drinking water was distributed for collection within a stipulated period which differed from prison to prison. Most of the time, prisoners collected drinking water within the time period set for them to have a shower, wash clothes and use toilets. Remandees from JRP complained that the time allocated to collect drinking water and store them in bottles was not sufficient for about 150 – 170 inmates, particularly when they all collected water from one or two water points. It was further observed that when they were locked inside the whole day and only unlocked at a specific time during which they had to collect water from the tap outside the ward, it resulted in a reduction in the time they spent outside engaged in exercise.

In the total study sample, 25% of men and 20% of women stated they do not have access to drinking water anytime they wish.

Graph 9.1 – Male respondents' access to drinking water across prisons



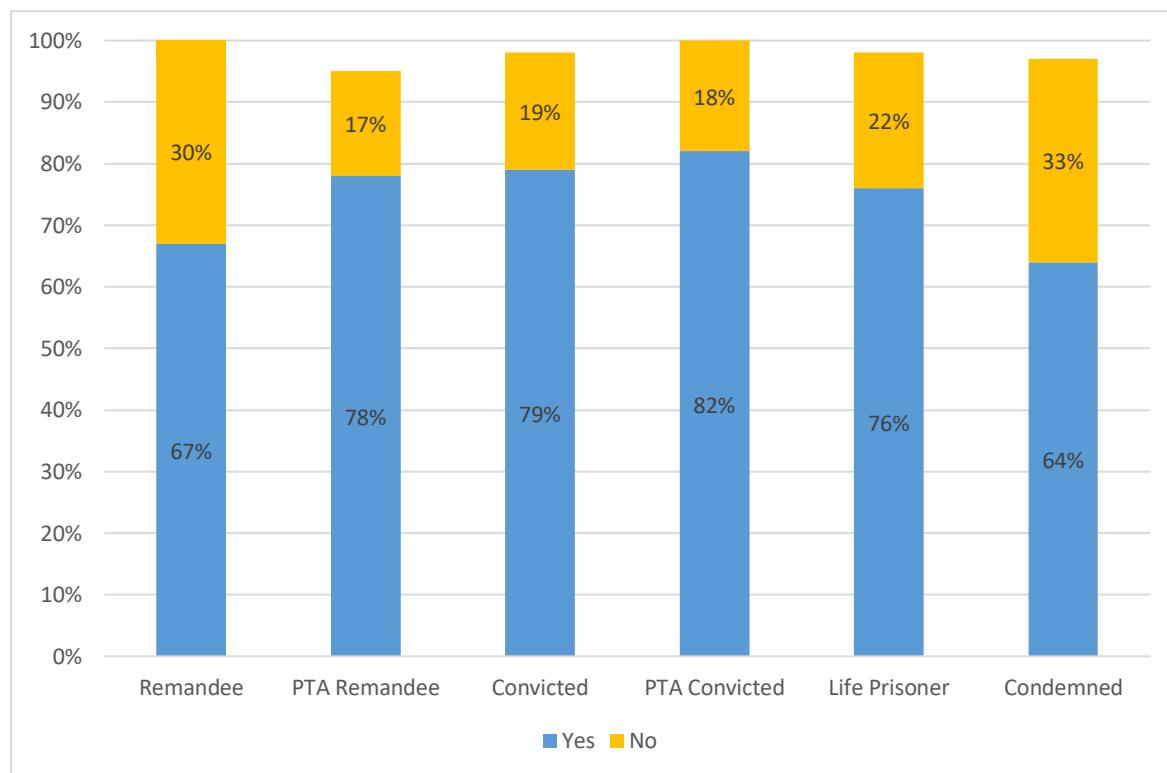
Data across prisons reveals that of male respondents 57% in PCP, 41% in MCP, 35% in CRP, 35% in BATRP, 32% in GRP, 31% in JRP, 31% in NRP said they do not have access to drinking water when they wish. Across prisons, 56% of female respondents in KRP stated they do not have access to drinking water as they wish, while in all other prisons the majority of the

female respondents stated they have access to drinking water as they wish. The Commission observed in KRP that there are no drinking water taps available inside the female wards.

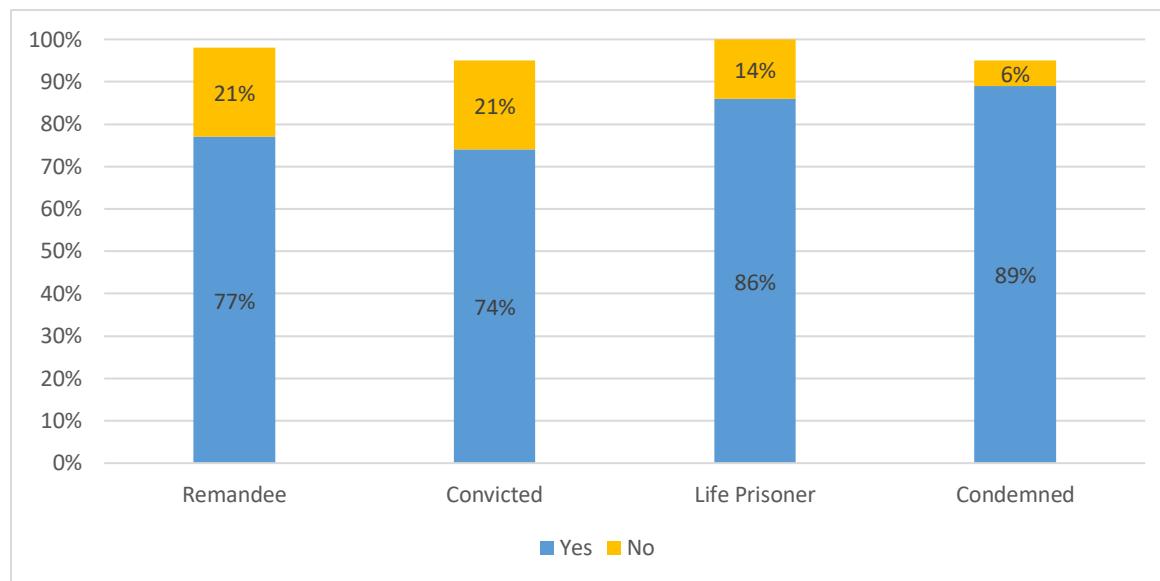
In PCP, the majority of the male prisoner categories, 100% of the PTA prisoners (both remandee and convicted), 64% of the life prisoners, 54% of the remandees, 54% of the convicted, stated that they do not have access to drinking water as they wish.

The tables below illustrate female and male prisoners' access to water across prisoner categories.

Graph 9.2 – Male respondents' access to water across prisoner categories



Graph 9.3 – Female respondents' access to drinking water across prisoner categories



There were exceptions where prisoners endured difficulties as they were not allowed to access water in their wards or did not have containers to store water in at certain prisons. One such example is the YO of HWC, who did not possess any vessels to store water and stated that they could not drink water from the tap available at the 'Suneetha Pasala', i.e. the school they attend because they alleged that the prison officer stationed outside would beat them if they went to the tap outside their classroom to drink water. A similar claim was made by inmates at the HWC work camp who stated that they were beaten by the officers when they went in search of water, when the tank assigned to supply drinking water became empty.

To construct an accurate picture of access to drinking water, the quantitative data should be read together with the patterns identified in the qualitative data, i.e. that inmates fill bottles and buckets with water and keep with them in the wards/cells to be able to drink water anytime they wish. Hence, the majority stating that they have access to drinking water is not an indication of the availability of running drinking water within their wards/cells. Further, even where the availability of drinking water was high, such as in ACP where 92% of male respondents stated that they have access to drinking water, it must be noted that the quantitative question does not reflect the quality of water as illustrated by the photograph below of an ACP remandee demonstrating the low quality of the drinking water, which was also observed by the Commission.

Many inmates alleged the drinking water they were provided was unclean and not subject to purification. Particularly at ARP and AOPC, prisoners stated they were exposed to the risk of succumbing to kidney diseases in the long term since Anuradhapura is a city well known for the increased prevalence of chronic kidney disease and the water is purified by residents before it is consumed. However, prisoners in Anuradhapura at the time did not receive

treated water for drinking purposes.²¹² According to a convicted male prisoner in AOPC, “We drink it, even though there is high concentration of fluoride in the water. Normally, people use filtered water to drink, but there’s no such facility here... water is a big problem.” A male remandee from ARP complained that:

“Drinking water is chlorinated water. Even that water we need to filter. We wrap it [the container used to store water] with a white cloth and then drink the filtered water. The water is heavily treated, so if we don’t filter it, it might affect our kidney and teeth. Most prisoners’ teeth are broken because of the water.”

Similar reports were made to the Commission from JRP, ACP, WWC, KGRP, PCP and KRP. One inmate from KRP stated, “They pump it [drinking water] water from the lake over there. Sometimes there are small fish and tadpoles in that water/ sometimes there are earthworms also...”. Inmates therefore have to purchase drinking water from the canteen, a costly alternative that most prisoners cannot afford, while others come up with DIY measures to filter the tap water supplied to them. Inmates from ACP stated, “We filter the water and drink somehow or buy bottled drinking water from the prison canteen”.

4. Water for the maintenance of personal hygiene

4.1. Bathing and showering

“[At CRP] Once we wake up in the morning, there won’t be an adequate amount of water to bathe. They would provide water to bathe during certain time periods. Then I would stand in line along with fifteen to twenty other inmates carrying water buckets. During our stay, underworld or other influential inmates would get first preference to bathe. Then we would only get around two buckets of water to bathe. That’s how we lived our life while on remand.”

PTA convicted prisoner, JRP.

The SMRs require bathing and shower arrangements to be made available in a manner which enables detainees to have the opportunity to have a bath or shower as frequently as possible, depending on the season and the geographical region.²¹³ Where detainees reside in an environment with a temperate climate, they are to be allowed a bath or shower at least once a week.²¹⁴

²¹² The Commission was informed that water filters were installed by the successive SP of ARP in June 2019.

²¹³ SMR 2015, r 16.

²¹⁴ ibid

In national legislation, Section 70 of the PO requires bathing to be facilitated and be allowed at places built for the purpose, inside or at a point that is nearest and the most convenient.²¹⁵ Where such means are made available, separate arrangements for male and female prisoners must be arranged.²¹⁶ Even upon admission, as stated in the SRs, prisoners are expected to take a bath as long as they do not object to it.²¹⁷ Where detainees are engaged in prison-related work, sufficient arrangements must still be made to allow them to bathe.²¹⁸ These directives are to be issued by the SP provided that those means do not interfere with the stipulated hours of labour.²¹⁹ Bathing or washing at times and places that are unapproved may constitute a prison offence²²⁰ and any offender might receive penal sanction as a result.²²¹ Jailers are given the responsibility of ensuring that all prisoners are given the opportunity to access bathing and shower facilities.²²² Unlike other legislative enactments, the DSO accords certain privileges to certain classes of detainees to have separate baths.²²³ When this is done based on good conduct, and aims to develop a sense of responsibility and secure the interest and cooperation of prisoners in their rehabilitation, SMR 95 allows it and it is encouraged. However, when this is done based on social status, it becomes discriminatory. In the Sri Lankan context, since in theory, this rule is applicable to prison orderlies or ward leaders etc., i.e. positions that are bestowed upon people for good conduct, the law itself is not discriminatory.

When limitations have to be imposed to conserve water, detainees should be allowed at least five litres of water each for each bath.²²⁴ Detainees should be allowed to wash themselves using buckets of water²²⁵, whilst arrangements are made to ensure that the minimum specification of five litres is adhered. As soon as the water supply is restored, the amount specified needs to be increased.²²⁶

In the study, from the total number of respondents, 41% of men and 31% of women stated that they do not have access to water for cleaning and sanitation purposes any time they wish.

²¹⁵ PO No.16 of 1877, s 70.

²¹⁶ ibid

²¹⁷ SRs 1956, s 157.

²¹⁸ ibid s 217(2).

²¹⁹ ibid

²²⁰ PO No.16 of 1877, s 78(xxii).

²²¹ ibid, s 79.

²²² SRs 1956, s 95.

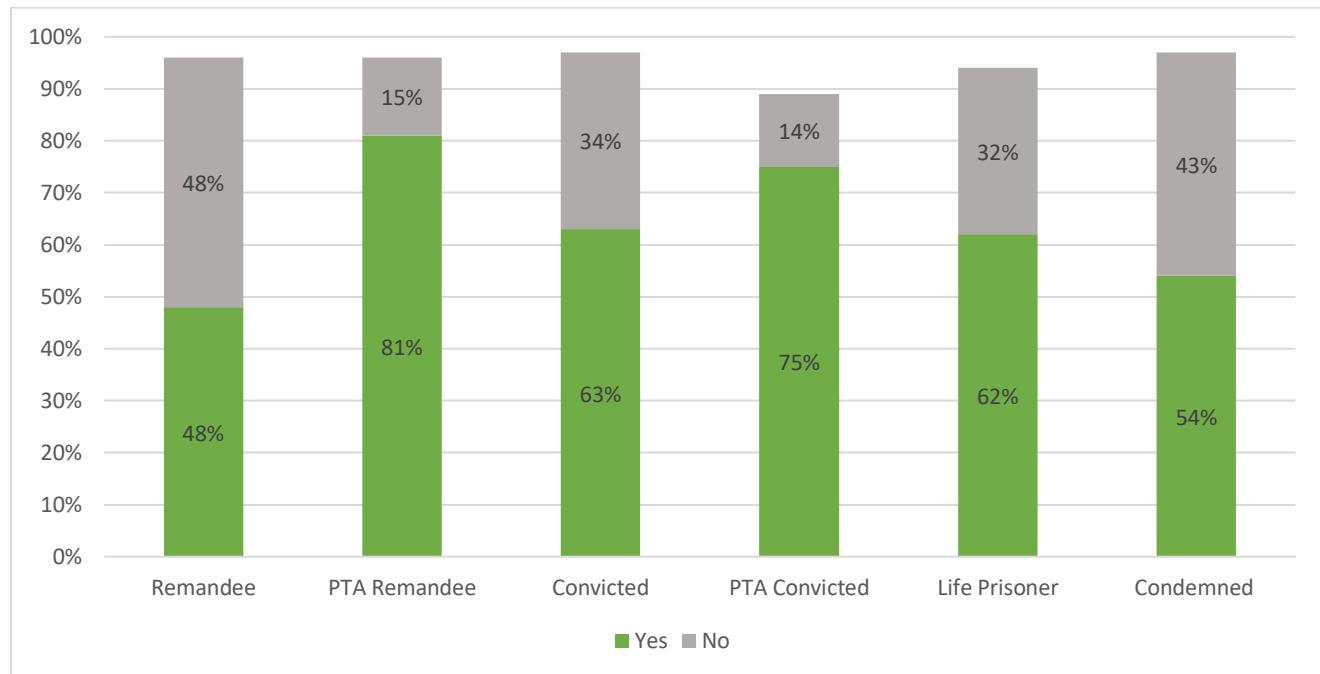
²²³ DSO 1956, ss 659(a), 664, 'The following privileges accorded to Disciplinary Prison Orderlies in Welikada Prison will be given effect to by the Superintendents of all outstation prisons wherever practicable: (a) separate baths and messing..', '....In addition to being permitted to move about the prison unescorted, they (Instructors, Grade II) will be entitled to the same privileges as Disciplinary Prison Orderlies, with whom they rank as equal'.

²²⁴ Nembrini (n2) 44.

²²⁵ ibid

²²⁶ ibid

Graph 9.4 – Male respondents' access to water for cleaning and sanitation purposes across prisoner categories



In contrast to the male respondents, the majority of women across all the prisoner categories stated they have access to water for sanitation purposes any time they wish. While 86% life prisoners, 78% convicted and 64% remandees had access, the percentage of condemned women who had access was 72%. As explained in the chapter on Accommodation²²⁷ and in this section, female prisoners have relatively better basic sanitation facilities compared to that of their male counterparts due to the smaller number of prisoners.

Across the prisons, ACP has the largest share of positive responses with 87% of prisoners stating they have access to water for cleaning and sanitation anytime they wish. All wards in ACP contain either water tanks or water taps, including the single cells used by condemned and special prisoners. Unless the water supply to the prison is disconnected for any reason, there is a sufficient supply of water to the wards in ACP. Comparatively, quantitative as well as qualitative data from the majority of male respondents in KRP, WCP, GRP, PCP and MCP indicates they do not have access to water for cleaning and sanitation purposes anytime they wish. Many respondents also mentioned in the questionnaires that there is a strict limit on the number of buckets of water they are allowed per day for all purposes.

The provision of bathing facilities is through water points, including showers, at communal bathing spaces built in the vicinity of the wards. However, but it was observed that the number of showers and taps at the disposal of prisoners was almost always inadequate to cater to the actual need. A common observation was the number of taps and showers that were unfit for use, as they were in need of repair, pointing to the lack of care shown towards

²²⁷ For a detailed discussion, please refer chapter Accommodation.

maintaining and replacing taps and showers for prisoners. Makeshift showers built by inmates using PVC pipes were also observed, particularly in GRP, ARP and MCP where inmates have become accustomed to using such arrangements. Inmates who engaged in party-related work usually bathed inside their respective work parties, since the work parties often had separate bathing facilities.

The Commission observed that prisoners were given the opportunity to bathe at specific times in almost all the prisons visited. They were allowed to bathe maximum either once or twice a day. However, many prisoners complained about the difficulties they encountered in having to bathe during appointed hours for reasons ranging from, the inadequate time allowed for bathing to the inadequate supply of water for this purpose. While the reasons for designating bathing hours can be understood, particularly because the shower facilities are often found outside the wards, which the inmates cannot access after ward/cell closing time, the problem lies in the lack of continuous water supply and shower facilities not being available inside the wards – as well as the problem of overcrowding whereby the available facilities are not equipped to accommodate the needs of all prisoners. This results in stipulated hours for bathing becoming unfair, for instance when all inmates engaged in laborious party work are required to shower in the short time span between the end of their work hours and the evening lock up time.

Officers' reportedly used their discretion to permit the inmates to bathe either in the morning or evening hours. This could prevent some inmates from accessing showering facilities depending on their circumstances. For instance, prisoners engaged in party-related work at MCP stated they would either be authorized to bathe only in the evening after work, or bathe in the morning and only wash their faces in the evening, resulting in them not being able to bathe properly after engaging in manual labour all day.

Inmates are allocated a certain number of buckets or tins of water with which they have to bathe, as observed in PCP and BATRP, since they had no access to showers. The total number of buckets of water that a prisoner was allowed to use differed from prison to prison. A request for an extra bucket of water could lead to a violent response from the supervising officer or tank party inmates, as stated by inmates from BATRP. There were instances of inmates having had to bathe inside their toilets instead of having access to common shower areas, such as at ACP.

When inmates complain about the inadequacy of such facilities to relevant authorities, prison administrations reportedly point to infrastructural issues, which they state cannot be resolved immediately. The Commission notes that a number of problems related to access to water are due to structural, bureaucratic and financial factors, over which the SPs often have little authority or ability to address, and hence a systemic change supported by the relevant ministry is required.

The Commission was informed of instances where the 'kamara party' or the 'tank party' exercised control, sometimes in an arbitrary manner, over the way in which inmates utilized bathing and shower facilities, for instance, by monitoring the number of buckets used for bathing. In some instances, inmates alleged that the 'kamara party' or the 'tank party' would

decide when to fill the tanks, or allow extra buckets of water to certain inmates, such as those from his own ward. Prisoners from GRP, BATRP, MCP, POPC and ARP provided examples of the kamara parties being vested with such a degree of power. For instance, interviewees from a particular ward at KGRP alleged that the kamara party would reduce the number of buckets an inmate received, as punishment, without informing the officer, if an item went missing in the ward.

4.2. Laundry

ICRC proposes that the time given to access water to wash and do laundry should be in addition to the minimum standard of one hour per day in the fresh air.²²⁸

The PO, to this effect, provides for laundry facilities to be made available to the prisoners²²⁹, while the SRs vest the responsibility in Jailers to ensure that prisoners are allowed to use laundry facilities inside the prison²³⁰.

The opportunity to wash clothes was available to inmates in almost all prisons the Commission visited. Inmates were allowed to wash their clothes while they were having a bath within the allotted time. Where limited time was allocated, inmates have found it difficult to wash their clothes, as they also have to collect water for storage, use the toilets and bathe during this time. This was specifically reported to the Commission by inmates from ARP, WCP and JRP who had to become accustomed to performing all such tasks within the limited time that was allowed.

Aside from the difficulties reported above, the Commission observed in most instances that the inmates found it inconvenient to dry their clothes after washing them, with most allowing clothes dry in whatever way they could in order to have it ready for daily use. At WCP, it was noticeable to the Commission that the inmates drew lines across balconies even with the limited resources they had in an attempt to dry their clothes.²³¹ The same can be said of the female interviewees from NRP who recounted the hardships they have had to endure owing to not having a proper place to dry clothes inside their ward. When wet clothes were hung to dry inside the ward, it would contribute to the humidity in the ward.

5. Sanitation

5.1. Access to toilets

The SMRs require the adequacy of sanitary facilities inside a prison to satisfy the needs of nature as and when required.²³² ICRC has specified that one toilet should be available for

²²⁸ Nembrini (n4) 54.

²²⁹ PO No.16 of 1877, s 70.

²³⁰ SRs 1956, s 95.

²³¹ For a detailed discussion, please refer chapter Accommodation.

²³² SMR 2015, r 15.

twenty-five detainees²³³ whilst one tap should be installed in each toilet block for washing hands after using latrines²³⁴. However, this ratio assumes unrestricted access to toilets.²³⁵ Its suitability should, thus, be weighed against the time allowed for detainees to access the toilet areas and the frequency of access.²³⁶ ICRC has further issued several recommendations based on the issues common to the usage of toilets in most of the prisons, which are as follows:²³⁷

- Toilets should be in or near the accommodation cell/block with twenty-four-hour access being either unobstructed or provided by staff on request.
- Where single cells are provided, each cell should contain a toilet. If it is not practically possible, there needs to be a mechanism in place to enable the detainees to access the toilet whenever necessary.
- Toilets should be located and separated in a manner where they are guaranteed of maximum possible privacy.
- A system of flushing or sluicing the toilet immediately after use should be installed and maintained.
- Staff should be deployed in a manner where the detainees have access to toilets whenever necessary, for instance, in the case of special prisoners who would have to be escorted to a toilet if it is outside the sleeping areas.
- Toilets are to be lit at all times so that detainees can use them and keep them clean.²³⁸

The SRs permit prisoners to leave their ward to use sanitation facilities as and when the need arises.²³⁹ This is further reiterated by the DSO which allow detainees to access toilets even while they are being taken on escort.²⁴⁰ There is a duty placed on the SP²⁴¹ and the MO to inspect its condition.²⁴²

²³³ Nembrini (n4) 53.

²³⁴ Nembrini (n2) 56.

²³⁵ Nembrini (n4) 53.

²³⁶ ibid

²³⁷ ibid

²³⁸ Nembrini (n2) 25.

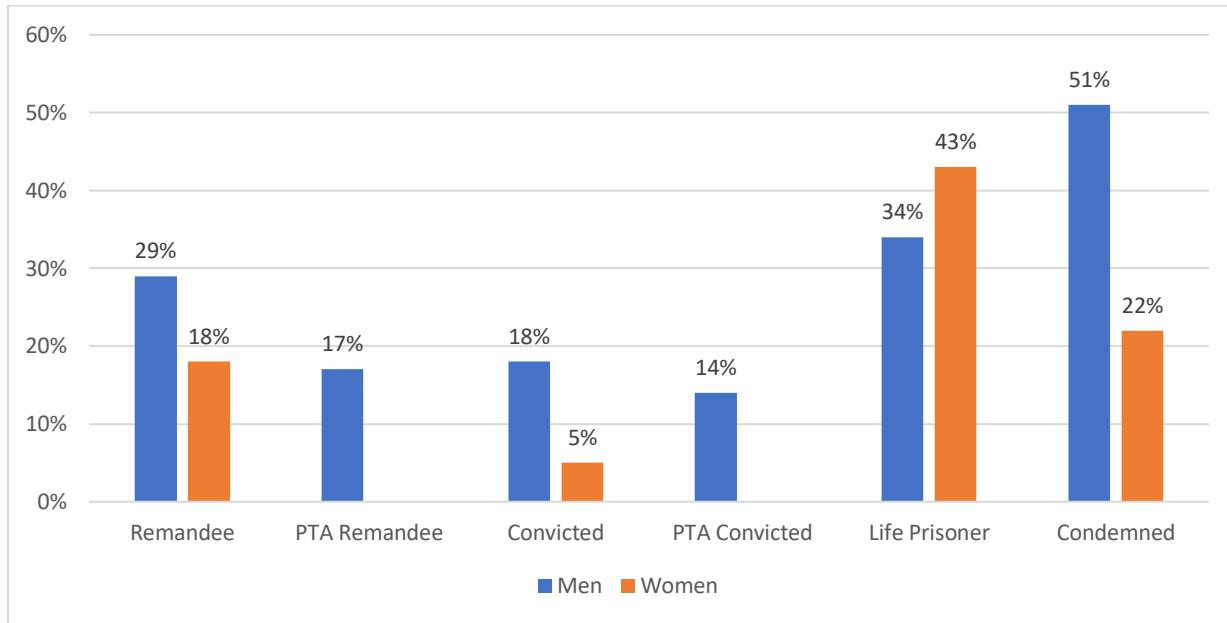
²³⁹ SRs 1956, s 145, 'No prisoner shall be allowed to leave his ward or cell between lockup and unlock, except for one of the following purposes – Latrine purposes.'

²⁴⁰ DSO 1956, ss 67, 68, 'If a prisoner wants to go to the latrine, the officer-in-charge of the escort will detail one of the junior officers to go with the prisoner....', 'Where there is no latrine available, the officer-in-charge of the escort in cases where handcuffs are used, will secure the prisoners to a junior officer by means of the closeting chain and the prisoner taken to a secluded spot within a short distance from the road and always within sight of the senior officer.'

²⁴¹ SRs 1956, s 16, 'He shall inspect the yards, cells, cook rooms, latrines and every part of the prison at least once a month.'

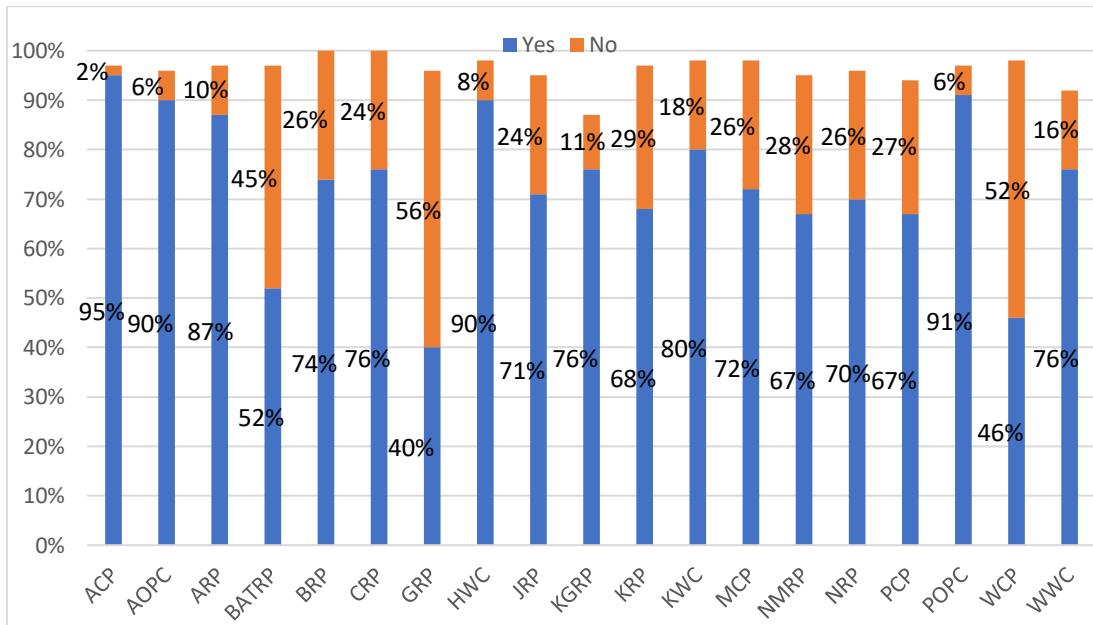
²⁴² ibid s 50, 'He shall specially note all defects of drains, latrines and the conservancy management generally of the prison.'

Graph 9.5 – Male and female respondents who do not have access to toilets anytime they wish across prisoner categories



In the study, across prisoner categories, of the male respondents, 52% condemned prisoners, 34% life prisoners, 29% remandees, 18% convicted and 14% PTA stated they do not have access to the toilet anytime they wish. 78% of condemned women stated they had access to a toilet whenever they wish, due to the fact that the majority of the sample's condemned women were from PCP where a toilet was available in each cell.

Graph 9.6 – Male respondents' access to toilets as they wish across prisons



The data across prisons illustrates that 52% of male respondents from WCP and 56% in GRP stated they cannot use the toilet any time they wish, while 95% in ACP stated they have access to a toilet any time they wish. GRP also reflects the issues of overcrowding and limited basic sanitation facilities available as observed by the Commission. The larger portion of the respondents from GRP were remandees, where for example, ward H housing 196 remandees had only two squatting toilets, and ward B (upstairs ward) housing 166 remandees had no toilets, and hence they shared the two squatting toilets located in ward A (downstairs).

Access to toilet and latrine facilities was most commonly available to the inmates for use inside as well as outside the wards at which they were housed. As observed by the Commission, the inmates had at their disposal one or more than one toilet within the vicinity of where they were detained. Instances of some inmates not having access to toilets inside their wards have been noted, particularly from the interviewees in BATRP. These inadequacies have, inevitably, compelled inmates to encounter difficulties when responding to the calls of nature. Where only one toilet was available for the use of more than 150 inmates, they have to queue outside waiting for their turn, as reported by inmates from PCP. Since inmates have to manage their daily activities within the given time, the limited access to toilets has, thus, proven to be extremely difficult in conditions where the wards were overcrowded.

It was also observed by the Commission during inspections of work sections that most areas did not have readily available toilet facilities. Especially in open prison camps with acres of cultivation areas, toilets are scarce. In AOPC, KWC and HWC there were no toilets in the cultivation area, and in WWC an officer said that two of six cultivation sections did not have toilets. If prisoners need to use the toilet during the working hours, they have to obtain the permission of the officer in charge of the party and return to the wards which are mostly kept closed. The following exchange with a prisoner in KWC illustrates the problems they encounter in using toilet facilities:

“Q: Do they not open the wards for you when you want to go to the toilet?

A: Sometimes there have been days where they haven’t opened the ward. The other times, if we tell them, they open it and we can go.

Q: Have there been times when they don’t open it? Where they don’t let you go?

A: No, it’s not that they don’t let us go, but, if there isn’t anyone [any officer] around when we come, we won’t be able to get the ward opened.”

The KWC compost area was about 1.5 km from the wards and therefore an inmate has to walk 3 km to and from to use the toilet because the toilet near the compost party was not in a usable condition. Yet, even after walking for 3 km there was a possibility that he might not be able to use the toilet as illustrated by the exchange above. In WCP and ACP, industrial party sections had common separate toilets within the section. Even though the ACP work

party sections had a toilet inside each section the inmates were said to be using outside toilets only.

The Commission was also informed of the difficulties endured by inmates accessing toilets at night. Where the wards were open wards, like J Ward at NMRP, inmates have access to toilets inside the ward at night. However, the scenario is different if the wards have cells that are locked at night. Inmates would not be able to access toilets at night time in such situations, as officers would not open the cells to allow prisoners to use toilets at night. At HWC, even though the Commission was told that the inmates were allowed to access toilets outside upon request, it subsequently came to light that it was not the case. Prisoners of HWC informed the Commission that such a request often led to them being scolded or being ignored. The Commission was informed that, where inmates are not able to access the toilets at night, they have to use buckets to hold their waste overnight. For example, in WCP Chapel ward where cells are individually locked at night, inmates in each cell share a bucket in which they excrete urine and faeces, during the night. This bucket is either placed in a corner of the cell or is hung on the door. Multiple inmates have to share the same bucket, with the newest entrant to the cell often being responsible for cleaning the bucket the next day. Particularly at WCP, inmates who were located in the Chapel Ward upstairs alleged that they have to hang the bucket on a hook at night when the ward gets too crowded, increasing the risk of it spilling as a result.

In some instances, the inmates reported they had to use the same buckets in which they collect water and food, for urinating, as was the case with inmates from GRP and WCP. "There's a ten-litre bucket. We need to do everything using only that. We have to use that bucket to put the water after eating and we also sleep next to that. Even though we cannot stay there because of the urine smell, we still stay there", were the words of an inmate from GRP. Inmates had to use shopping bags where they were not provided a bucket to urinate in at night, particularly at GRP, WCP and KRP. As an inmate from WCP described it:

"If we want to pass faecal matter at night, we do it into a shopping bag and tie it. Then, we keep it in a corner of the room. In the morning, we throw it into the toilet. We wash the urine bucket. We have to bear the bad smell overnight. In the early days, which I came here, there were eleven people in my room."

Due to these factors, inmates stated they try to resist the urge of using the toilets at night; an interviewee from KRP stated, "When we can't go to the toilet on time, when we need to, we control."

Inmates with special needs were severely affected, particularly diabetic patients who faced problems when they did not have access to toilet inside their wards, since their medical condition requires them to use toilets more frequently than an average person. The Commission observed in JRP, that B1 ward, which housed elderly inmates as well as persons with disabilities, did not contain any toilets at all. Prisoners are permanently required to use two barrels in which they excrete urine and faecal matter, which are used by all prisoners and then kept in the ward, thereby emanating a strong foul odour. As the ward is on an upper storey and the majority of the inmates residing in this ward have restricted mobility and

cannot climb down the stairs, elderly and disabled prisoners in this ward invariably end up remaining inside all day and cannot be taken out for fresh air.²⁴³

The Commission was informed that the two barrels used as toilets have to be emptied and cleaned by the young abled-bodied persons residing in the ward, who are required to climb down the stairs while holding large, heavy barrels. They informed the Commission that the excrement inside the barrels often spills on them as well as the stairs, since they are usually full to the brim, so they are required to clean the stairs as well. This chore reportedly takes most of their allocated outside time to complete. When the Commission conducted an inspection of the ward, five containers of five litres each containing urine was observed.

The Commission observed that most punishment cells in the prisons visited lack sanitary facilities. For instance, in JRP, BATRP and KRP toilet facilities were not available for the use of inmates inside the punishment cells, and the basement of the Chapel Ward at WCP, which was designed to be used for solitary confinement for disciplinary reasons, but has reportedly not been used for at least a decade, contains no toilets inside. However, in WWC the punishment cell had one squatting toilet and in ACP each of the six punishment cells had a toilet each.

As the prison toilets did not have flushes, the Commission was informed that inmates had to use the limited buckets of water they were provided to wash away their waste after relieving themselves in the squat toilet. A lot of water is required to completely wash away excrement, which is the reason the limited number of buckets per prisoner is a matter of concern, since most of their water supply is used to clean the toilet. An inmate from MCP recounted, "You know that small paint bucket? They give us water in that. It finishes when we flush the toilet. Then you do not get the chance to get more water". The experience can even be worse for inmates who, in addition to having a limited number of buckets, have to carry water buckets to their wards. Inmates from WCP and PCP, were observed collecting water from water points outside their wards, when the pressure with which the water was pumped was insufficient for it to be made available to the upper floors of the building. Thus, where the water supply was already limited and each inmate is only allowed a stipulated number of buckets, most often only two which they carried in each hand, most of the water had to be used to manually flush away excrement. This leaves them very little water for other personal hygiene and sanitation needs.

Of the hardships that the inmates have had to encounter when using toilets, the lack of privacy is a key concern. The Commission observed that most toilets inside the ward did not have doors, particularly in BATRP, WCP, HWC, PCP, NRP and JRP, where inmates had to use the toilet in full view of other inmates. Inmates stated that having to use the toilet in this manner left them with no choice but to adjust to existing conditions. "I can't go to the toilet in the room because there are other inmates and I feel shy" were the words of an inmate from GRP when describing the experience. An inmate from WCP stated, "There are no doors for some toilets...There is a line of toilets which doesn't have doors. When we pass faecal

²⁴³ For a detailed discussion, please refer chapter Prisoners with Disabilities.

matter, other people who are in front of us can see it. There are only a few toilets which have doors". As an inmate from ARP stated:

"We asked to install urinals when repairing our ward. They said, "Why do you guys need urinals, urinate wherever you want." Now, we urinate in the corner of the tank. We don't have urinals. We have a toilet but there aren't urinals. When other people are looking at me, I cannot pass urine. There is something called shame, so urine is not passing quickly. I urinate when there is no one. Till then, I hold it in."

The Commission noted inmates using whatever materials that were available to them to protect their privacy, such as in BRP, where inmates from a particular ward created a makeshift curtain attached to the toilet by using clothes.

5.2. Chemical agents and cleaning materials

Inmates who wished to acquire cleaning materials from the prison administrations for the purpose of keeping their immediate environment, particularly toilets clean, said they were not able to obtain anything from the authorities. Hence, they were often compelled to use whatever that was available for this purpose. As reported to the Commission by the interviewees from ARP, they resorted to using ashes as cleaning material, since they were no longer provided with chlorine, plastic brushes and brooms. The CJ of WCP explained that the prison administration generally finds it difficult to provide such cleaning implements to inmates consistently as there are no allocations in the department's budget to provide cleaning materials. The then SP of BRP, Mr. Rohana Galapaththi, during the meeting with the Commission stated that the DOP usually provides only bleach and that they have had to obtain other cleaning agents via private donations. Prisoners have suggested that they be provided with cleaning equipment and products such as brooms, rakes, brushes, Dettol and detergent regularly to clean the common areas. A PTA inmate from ARP stated that since the provisions provided by the prison for cleaning the toilets and the wards are inadequate, they receive provisions, such as plastic brushes and washing powder to clean the toilets (in addition for laundry) through visits or through parcels posted by their families.²⁴⁴ Budgetary allocations for the provision of cleaning agents is crucial because the level of hygiene and sanitation in the prison premises will directly impact the spread of germs and illnesses amongst prisoners, and even prison officers, which in turn increases the demand for medical care.

5.3. Toilet pits and drainage systems

The Commission received complaints from a number of prisons regarding the poor construction and management of sewage drains and toilets pits, which would often overflow, thus emanating a foul odour and posing a risk to prisoners' health and hygiene in prison.

²⁴⁴ For a detailed discussion, please refer chapter Contact with the Outside World.

This problem was observed by the Commission at WCP, CRP, BRP and JRP. In JRP, the Commission observed prisoners cleaning the clogged toilet pits without using any gloves and inmates also alleged that the overflowing toilets were being cleaned only because the Commission was undertaking a visit. Officers of JRP alleged the overflowing toilets were a result of inmates clogging the drains with plastic and other items, while inmates stated the problem was a result of the poor infrastructure of the prison complex.

A number of complaints were received about the overflowing toilet pits in the Y Ward of the WCP Female Section, which is a common occurrence that renders the two of the four toilets unusable because of the blocked drain. As a result, 160 remandee women are required to use one or two toilets and a foul odour is emanated through the ward. Although the blocked toilets are cleaned, this happens very rarely. The Commission was informed by the CGP and the DOP PHI that an apartment complex has been built on top of the WCP drainage system which prevents the issue from being fixed, and the brunt of it is faced by the WCP Female Section which is on lower ground, compared to the rest of the complex, and hence the toilets overflow faster. The PHI also informed the Commission that the outdated drainage systems were not built to accommodate the current prisoner population in WCP, and hence overcrowding also contributes to the blockage.

The SP of BRP similarly informed the Commission that the blocked and overflowing toilets are a result of the overcrowding of the prison, as the aged drainage structure cannot sustain the level of occupancy in the prison. The PHI also informed the Commission that they visit the site of blocked drain pits in prisons and issue recommendations to the DOP. The Commission was not able to verify if the recommendations of the PHI were implemented. The PHI also recommended to the Commission that the prison officers be trained to monitor and oversee faulty drainages, so they can inform the PHI of any change in the situation during follow up visits undertaken by the PHI.

6. Provision of toiletries for the maintenance of personal hygiene

The SMRs specify the provision of toiletries as imperative for the maintenance of personal hygiene and require that detainees are provided with articles that are generally required for the maintenance of health and cleanliness.²⁴⁵ ICRC vests the responsibility upon the prison administration to supply soap sufficient for personal as well as general cleaning along with adequate amounts of cleaning agents and equipment ,including buckets and mops.²⁴⁶ It specifies that a detainee is to be given a minimum of 100g to 150g of soap per month.²⁴⁷

In line with international standards, the SRs stipulate that one third of an ounce of gingili or coconut oil be given to detainees for the maintenance of hair once a week, on Sunday or any other day as specified by the Commissioner.²⁴⁸ Where personal grooming is concerned, unconvicted prisoners are not compelled to cut their hair unless it is required on medical

²⁴⁵ SMR 2015, r 18(1).

²⁴⁶ ibid

²⁴⁷ Nembrini (n2) 47.

²⁴⁸ SRs 1956, s 223(2).

grounds and on the written recommendation of the prison MO²⁴⁹ as is reflected in the DSO²⁵⁰, but prisoners are to not be allowed to alter their facial appearance in a manner which would cause confusion regarding their identity²⁵¹. The Rules also provide for the SP to make necessary arrangements for hair cutting, shaving and dental hygiene of detainees²⁵², assigning prison barbers for the said task as long as prison work is not interfered²⁵³, supplying and ensuring the cleanliness of implements necessary for hair cutting, shaving and dental hygiene²⁵⁴. Added to this list of items are small combs²⁵⁵, inexpensive mirrors²⁵⁶ and nail scissors²⁵⁷ that ought to be provided at public expense with strict measures against misuse ensured²⁵⁸ It can further be noted that certain classes of prisoners are allowed

²⁴⁹ ibid s 160, A similar provision is made for in s 195 relating to unconvicted or civil prisoners not being compelled to have a hair cut.

²⁵⁰ DSO 1956, s 495, 'Except as provided under Statutory Rule 160 on the ground of medical necessity and then only on the written recommendation of the Medical Officer, no prisoner of any class or sex can be compelled to have his or her hair cut.'

²⁵¹ ibid s 496, 'Whenever in the case of unconvicted prisoners only, it is proposed on medical grounds to cut hair the Superintendent will, before sanctioning such action and unless the necessity is urgent, arrange to consult the prosecuting Police Officer who will, where necessary arrange for an immediate identification parade to be held in the appropriate court after which the hair may be cut. Similarly, unconvicted prisoners should not be provided with facilities to enable them to effect distinctive alterations to their personal appearance, with the object of avoiding or confusing identification, without reference to the prosecuting Police Officer and as a check on the alteration of facial appearance Superintendents will cause registering and admission clerks to note brief particulars in the admission register of such characteristics or not as the case may be.'

²⁵² ibid s 497, 'Having regard to local variations of location and nature of labour, Superintendents will make suitable arrangements for the hair cutting, shaving and dental hygiene of prisoners who are accustomed to and desire such facilities.'

²⁵³ ibid s 497, 'In respect of periodical hair cutting and shaving such arrangements should take the form of one or more prisoners being detailed for work as 'prison barbers' who should operate under the supervision of an officer and in such a way not to interfere with labour and the normal routine of the prison as little as possible.'

²⁵⁴ ibid s 497, 'ibid s 497, 'Materials and implements for general hair cutting and shaving of prisoners will be supplied at public expense and when not in use will be kept in the Prison Stores... and before use, razors and brushes will be sterilized by being dipped in boiling water for ten seconds after each shave or haircut, the appropriate implements will be cleaned, dipped in Lysol solution of one in fifty and again dipped in boiling water for ten seconds. In the case of dental hygiene, suitable arrangements will be made to provide for the general use of prisoners a suitable agent like powdered charcoal and gall nut which should be kept as fixtures in small boxes with hinged covers at places where morning ablutions are usually carried out."

²⁵⁵ ibid s 499, 'Long term prisoners who grow their hair and who apply for them may be supplied at public expense, small combs as part of their prison equipment.'

²⁵⁶ ibid s 499, 'A few small inexpensive mirrors should be provided at public expense and kept, as immovable fixtures, in suitable places like corridors, &c., where prisoners may have access to them'.

²⁵⁷ ibid s 500, 'Arrangements will also be made for few pairs of nail scissors to be kept in the Prison stores for general use by all classes of prisoner. Nail pairing may be done in the Prison stores during the prescribed hours or may be done during the hair cutting operations.'

²⁵⁸ ibid ss 497, 500, 501; 'Strict precautions against misuses of open blade razors will be taken..', 'care being taken to see that scissors are not misappropriated by the prisoners using them', 'In regard to the above facilities special precautions against misuse will be taken in the case of prisoners who are addicted to violence and of bad character or reputation, in order to guard against violence or utilization of any implements as weapons.'

privileges in relation to obtaining articles vital for personal hygiene.²⁵⁹ This special treatment, in itself, can be discriminatory as maintaining personal hygiene is a necessity common to all classes of prisoners and articles made available to that end should, thus, be provided to everyone.

Table 9.1 – The types of basic sanitation and hygiene products received by male and female respondents from the prison administration

	Men		Women	
Toothbrush	7%		17%	
Toothpaste	7%		17%	
Soap	12%		19%	
Shampoo	2%		4%	
Towel	5%		5%	

Table 9.2 – Male and female respondents who have received basic sanitation and hygiene products from the prison administration across prisons

	Toothbrush		Toothpaste		Soap		Shampoo		Towel	
	M	F	M	F	M	F	M	F	M	F
ACP	2%	4%	2%	4%	2%	4%	1%	0	1%	4%
AOPC	11%	-	11%	-	20%	-	1%	-	5%	-
ARP	2%	31%	2%	23%	4%	23%	1%	0	4%	0
BATRP	5%	29%	5%	29%	15%	29%	1%	0	1%	0
BRP	16%	36%	13%	18%	16%	27%	3%	0	6%	0
CRP	7%	-	7%	-	8%	-	2%	-	2%	-
GRP	4%	19%	5%	21%	5%	19%	2%	5%	5%	5%
HWC	36%	-	34%	-	48%	-	8%	-	21%	-
JRP	2%	0	2%	0	2%	0	2%	0	3%	0
KGRP	7%	-	5%	-	6%	-	2%	-	2%	-
KRP	4%	0	4%	2%	6%	16%	1%	0	5%	0
KWC	6%	-	5%	-	20%	-	2%	-	6%	-
MCP	7%	-	5%	-	10%	-	1%	-	7%	-
NMRP	17%	-	16%	-	16%	-	5%	-	6%	-
NRP	6%	17%	6%	17%	7%	14%	2%	2%	8%	5%
PCP	5%	23%	2%	26%	8%	29%	0	0	8%	0
POPC	5%	-	5%	-	10%	-	1%	-	8%	-
WCP	3%	18%	4%	17%	9%	18%	2%	6%	11%	7%
WWC	4%	-	3%	-	31%	-	0	-	2%	-

²⁵⁹ This is particularly true of prisoners falling within the category of Star classification (refer to s 414, 498 of the DSO), Discipline Prison Orderlies (refer to s 659 of the DSO), Instructor Grade II (refer to s 664 of the DSO), Instructor Grade I (refer to s 662 of the DSO) and Special Duty prisoners (refer to s 676 of the DSO).

The quantitative data is indicative of the fact that, while the majority of inmates do not receive basic sanitation and hygiene provisions, open prison and work camps and closed prisons receive relatively higher levels of provisions than remand prisons. This could be due to the fact that remand prisoners are entitled to more frequent visits than convicted prisoners and hence will be able to receive provisions from families, whereas convicted prisoners are only allowed one visit per month. This is likely the reason that administrations of closed prisons proactively procure provisions via organizations such as the ICRC or other donors. The exception is BRP, which records the highest percentage amongst remand prisons, of persons who have been given provisions mainly due to the proactive measures taken by the SP at the time and the rehabilitation officers. It should be noted that legally there is no requirement to provide provisions to remandees. The higher percentages recorded in NMRP is indicative of the fact that a large proportion of the male respondents were PTA inmates, who have been held at NMRP the longest, and thus have received some provisions from the prison.

Some convicted prisoners alleged that even a request to obtain such items was often met with reprimands. The Commission was notified of incidents of officers chasing such inmates away and allegedly writing that three bars of soap were issued even though only one bar was provided, particularly from POPC. As one convicted interviewee from JRP stated, "They are saying convicts are the children of the government. Are you providing these items to government's children?" There were exceptions to this - for instance, the Commission was informed of an initiative taken by BRP, where a cart containing basic provisions, such as soap and toothbrushes, is available for new remandees to utilize and they are expected to replace the items they take from the cart after they begin receiving family visits. Such initiatives are vital because the Commission has observed the dire predicament of new remandees, who are not entitled to any provisions from the DOP, and hence do not have any means to acquire essential provisions until their family members pay a visit.

Interviewees from HWC and KWC stated they were given soap by the prison administration, and interviewees from ACP said that the SP agreed to provide them with *Welikada* soap, which is made at WCP to be distributed for use across prisons. However, the Commission was informed by inmates of the soap party in WCP, that although they receive coconut oil from the Coconut Development Board for the production of soap, the quantity they receive often does not match the supply needed to produce the requisite amount of soap to meet the demand across prisons. In another instance, convicted, life and condemned prisoners at ACP requested the Commission to provide them with soap as they had not received *Welikada* soap for a long period of time. When inquired from the SP he mentioned that the prison had not received a stock of *Welikada* soap from the DOP. Later the SP had proactively taken measures, through the Prisoner Welfare Committee, to contact local philanthropists who then donated some soap.

Where women are concerned, of the total female sample, 62% stated that they did not receive sanitary napkins from the prison administration. The Commission noted that the DOP has no financial allocation to provide the female population with sanitary napkins²⁶⁰.

Remandees always have to depend on their families to obtain such items for their personal use. Within such a context, inmates who do not have/are estranged from close family members, or whose family members do not live close to the prison or who were of foreign origin are at a severe disadvantage. Examples of these inmates being forced to depend on other inmates were reported to the Commission from KRP, ACP, WCP Female Section and NRP. In such cases, the Commission was informed that donations of such items by charity organizations, church and well-wishers were distributed among these inmates.

As discussed in the chapter on Foreign Nationals, it was reported that foreign inmates would, in exchange for performing tasks, such as washing clothes and cleaning the urine buckets for the locals, be given provisions from the supply of local remandees. Some foreign inmates said they had to barter bread and other food items for which they were given provisions by other inmates. This was particularly true of foreign inmates from WCP, ACP and NRP who informed the Commission the extent to which they relied on local inmates to obtain essentials required to maintain personal hygiene.²⁶¹ When this issue was brought to the attention of a number of SPs, they stated that funds allocated by the government are not sufficient for this purpose and that they have had to depend on donors and the Welfare Fund, making it difficult for them to consistently provide inmates with basic items.

The Commission was further informed that convicted prisoners found it difficult to obtain razors, scissors and hair oil for the maintenance of personal appearance. Where such articles were available for general use, inmates have been doubtful of its cleanliness given the fact that these are shared by a large population of prisoners but are not routinely or thoroughly cleaned. Prisoners have suggested that prisons provide inmates with the correct equipment to cut hair or make provisions for it inside the prison, like a barber whose services the prisoners can avail. The Commission was informed that the salon party at WCP receives only two blades per week, while haircuts are given to at least fifty persons in a single day. Inmates from WCP remarked they were reluctant to use the razors at the salon that was available out of fear of contracting diseases.

Due to the inconsistent provision of articles required to maintain personal hygiene, inmates were often compelled to depend on alternatives. Inmates from JRP claimed that they were no longer provided with half a bottle of oil and shaving razors, which they earlier received. They stated that their request to obtain pairs of scissors was rejected even if they assured the administration of returning them after use. They further experienced difficulties in getting their hair cut regularly as those arrangements were not frequently facilitated inside the prison. The Commission observed in ACP that a salon party prisoner visits the

²⁶⁰ For a detailed discussion on the challenges faced by women in accessing feminine hygiene products, please refer chapter Women.

²⁶¹ For a detailed discussion on access of foreign nationals to basic provisions, please refer chapter Foreign Nationals.

condemned/special cells to give haircuts to prisoners who require one. However, the same scissors, the same comb and the same blade are used for hair cutting and shaving the beard for everyone, without being cleaned after using on one person, which is unsafe and unhygienic.

In order to prevent contraband being smuggled through items received during visits and reduce the human resources and time expended in conducting thorough searches of items, prison administrations are considering limiting or banning prisoners from receiving such items. Given the DOP does not have budgetary allocation to provide items to prisoners for personal grooming and maintain personal hygiene, limiting or banning such items from being provided during visits would adversely impact prisoners. If such items are to be limited or banned, then provision must be made by the DOP to provide prisoners with such items.

Section 312 of the SRs states that clean clothes shall be issued every Saturday afternoon, provided that the clothing of prisoners engaged in any labour which causes undue soiling of clothing may, at the discretion of the SP be changed more frequently. Section 315 of the SRs states that prisoners employed as cooks, blacksmiths, water and latrine parties, sledgers, and miners shall be supplied with a suit of partly-worn clothing, in addition to their usual clothes. Section 124 of the SRs states that subordinate officers shall ensure that prisoners are properly dressed when paraded for work.

These provisions illustrate that domestic regulation intended the provision of adequate clothing for working prisoners. However, an adequate supply of clothing for working prisoners is not distributed by the prison administration, not even for prisoners who work in parties which soil clothes fast, such as the kitchen party. For example, it was said by the WCP kitchen night party inmates that they have only one suit, which they have to wash at the kitchen while taking a body wash and return to the ward wearing the wet suit they had just washed. They allow it to hang-dry for about two hours inside the ward and wear it again and go to work. Inmates at HWC stated they face a similar predicament, with inmates mentioning that they do not have time to wash the clothes they have. As they said, "Imagine, we come from work at 1400h and we can't wash our clothes at that time and dry them. Then they keep us inside the wards. They don't let us go out. Therefore, we don't get a chance to wash our cloths or let it dry".

Many work party inmates mentioned that they did not receive a second set of clothing after they received the first one upon admission, and hence have requested their families to sew suits for them. The Commission was informed that sometimes tailoring party inmates sew clothes for themselves inside the prison after requesting their families to bring them fabric. Prisoners who do not have family support and are not receiving family visits therefore suffer many disadvantages. In the POPC motor vehicle service party, it was observed that the inmates had been given overalls to wear when working.

The Commission observed that although sewing parties are engaged in stitching prisoner uniforms, they do not have adequate fabric to stitch uniforms for the total number of prisoners in the system. Although the DOP budget contains an allocation for prisoner

uniforms, it is not adequate to supply clothes for the large prisoner population. As stated by the Chief Rehabilitation Officer at DOP:

‘There is no budget allocation for DOP for such items. The government must provide prisoners with basic necessities such as soap, toothpaste, toothbrush, jumper. Prisoners don’t even receive that. This is a basic need for a human being. You put a man behind bars you should at least give him a jumper to wear. Instead prisoners have to ask their families to send jumpers. Every prison has to depend on the Welfare Committee now.’

7. General observations

The facilities to provide access to water were observed to be at a bare minimum and need immediate improvement in order to correspond to the needs of the overpopulated prisons. The incidence of water not being supplied consistently and of water not being pumped at the time it was usually due, water cuts and water shortages were reported from virtually every prison and posed serious hardships for prisoners. Alternatively, in prisons where inmates were allocated a certain number of buckets per day for their use, the sentiment that it was not adequate to fulfil their sanitation needs was ubiquitous. Even when water was provided, the quality and the quantity of water fell below required standards, as it was not neither sufficient nor suited to fulfil the most basic needs of inmates. Inmates commonly alleged that the water was contaminated and hence, not safe for daily usage.

Inmates in most prisons are required to use toilets which do not have any doors or coverings where their privacy can be maintained. Although sanitation facilities were available both outside as well as inside the wards, inmates have not been able to use toilets after being locked in their cells for the night and are forced to use polythene bags or buckets instead where such facilities were not available inside. Prisoners feel the loss of dignity and humiliation when they have to urinate or defecate in tin buckets, in front of their other cell-mates.

The situation was worse for inmates with special needs and medical conditions or who are elderly and require accessible facilities or need to use the toilet frequently. Similar hardships were borne by inmates (particularly convicted prisoners and remandees who received no visits) when they had to obtain cleaning agents, toiletries and others items necessary to maintain their hygiene and keep their environment clean. Due to the lack of budgetary allocation the prison administration has not been able to consistently provide prisoners with such articles, and has done so only in an ad hoc manner through items donated by charitable organizations, and entities such as the ICRC.

10. Access to Medical Treatment

"Our health really declined as soon as we entered prison. Every man becomes sick within a week. Cough, fever, cold, asthma, all that starts to happen. With the overcrowding, respiratory diseases are very common. Also, we get skin diseases when we come here. We start to get boils, wounds, rashes. Maybe because all the prisoners are stuck together, sweating. There isn't enough space in the prison. I hope they will give a solution for that. We can't sleep. When you put one hundred and fifty prisoners in a ward where you can put only a hundred, it becomes cramped. They sleep facing each other, there is barely an inch between persons. It's really difficult to sleep like that. There is more chance of respiratory diseases and illnesses spreading."

Remandee, KGRP

1. Introduction to prison healthcare

Health is central to several aspects of prison life and prison management. The UN Basic Principles for the Treatment of Prisoners specifically states that prisoners should be provided access to health service without 'discrimination on the grounds of their legal situation'. The Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment²⁶² adopted by General Assembly resolution 37/194 of 18 December 1982 (hereinafter referred to as Principles of Medical Ethics), also specifically set out principles by which medical personnel must adhere while treating prisoners.

The primary rule for health care in the SMRs is based on the premise that an incarcerated person should have access to the same standard of healthcare as a person outside prison. This means that where the provision of medical services is concerned, a prisoner's criminal conduct, or suspected conduct, cannot be an impediment to or a factor that affects the provision of healthcare. While it is clear that prisoners do have access to medical attention while they are held in prison, it is crucial to examine whether the quality of healthcare they are provided matches the standard of healthcare available to a person with liberty. Any disparities in the quality of medical treatment offered to prisoners should be examined to ascertain the reasons for such shortcomings.

Against this backdrop, it must be stated at the onset that poor conditions in prisons and overcrowding, coupled with inadequate access to health care, can not only exacerbate pre-

²⁶² UN General Assembly, *Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 18 December 1982, Resolution 37/194

existing health conditions of prisoners, but also lead to the development of new medical conditions that they did not have prior to incarceration.

The Sri Lankan prison healthcare system is integrated within the public health care system in accordance with the SMRs, such that the common practice is to take inmates to the nearest GH or clinic, for ailments that cannot be treated in the PH. This also results in the access of prisoners to medical care being directly affected by the efficiency and cooperation of two state entities, namely the DOP and the MOH. For instance, the recruitment of MOs, technical expertise and medical supplies for prisons are provided by the MOH, as the DOP does not have a separate budget for medical expenses. All other issues including the recruitment of medical personnel like nurses and dispensers and issues concerning the infrastructure and facilities of individual PHs, are within the purview of the DOP. Importantly, the DOP is solely responsible to organize the transfer of prisoners to and from prison to other institutions for the purpose of medical care.

The specific national legal provisions related to the different aspects of medical care will be discussed in the relevant sections in this chapter.

2. Infrastructure and medical facilities

2.1. Medical infrastructure

SMR 25 (1) states that all prisons should have in place a health care service to evaluate and treat sick inmates while Section 68 of the PO specifically states that every prison must be equipped with an infirmary or a proper place for the reception of sick prisoners.

All prisons that were surveyed for this study, except JRP, were found to have a PH which contained beds where inmates could be admitted. JRP did not have a functional PH and had no beds, which prevents prisoners from being admitted in case of an emergency. Depending on the severity of the case, all prisoners at JRP are taken to the GH for medical treatment. Although BATRP has a PH which contains beds, at the time of the visit, the Commission found that the prison had not been assigned doctors since 2014. The SP of BATRP informed the Commission that he had written to the MOH several times, but no doctor had been assigned. During follow- up with officers of BATRP, the Commission was informed that two doctors, two nurses and one dispenser had been appointed to BATRP PH by the Regional Director of Health Services (hereinafter referred to as RDHS), Batticaloa in February 2019. The SP of BATRP at the time also mentioned that all the equipment in the PH had been sourced with the help of NGOs and charitable donations.

Most PHs were observed to be overcrowded; in some instances, inmates were seen sleeping on the floor. This was also observed in the PHs of BATRP and WCP where sick inmates are made to sleep on the floor due to the shortage of beds.

The Commission was informed that at the PH in HWC there was no electricity for a year. When these problems were brought to the attention of the Acting Director of Prison Health

Care (hereinafter referred to as AD) of the MOH, he stated that they only offer technical expertise, and medical supplies and issues relating to infrastructure of the PH must be handled by the individual prison. According to the AD, all PHs are considered to be on the level of a divisional hospital, on the hierarchy of healthcare institutions; they only provide primary health care.²⁶³ The PH at WCP is higher on the hierarchy in comparison to all other PHs because it is the only hospital with more facilities, such as a special ward for mentally ill patients, X ray rooms, more bed strength and more clinics. Hence, it is placed between a Divisional Hospital and a Base Hospital in terms of medical facilities. This is the reason prisoners from around the country, who require in-patient treatment and care, are transferred to the WCP PH when the PH in their own prison is not equipped to care for them. However, the WCP PH was found to be overcrowded and overburdened by the continuous influx of prisoners from around the island.

The Commission was informed by the then CGP that efforts were being made to upgrade the ACP PH to a Base Hospital, so prisoners requiring serious and urgent treatment could be treated within the prison premises, and prisoners from around the island that require in-patient treatment and care could be transferred to ACP, instead of WCP PH, to ease the burden on the WCP PH. However, this would be inconvenient for prisoners and prison officers from provinces that are at a considerable distance from ACP, such as the Central, Northern and Eastern provinces, as prisoners would have to be transported long distances to receive treatment. Further, as highlighted in this chapter, inmates from the Northern and Eastern provinces would face difficulties in explaining their illnesses to the medical personnel due to language barriers.

Where medical equipment is concerned, MOs also pointed out the lack of medical equipment such as magnifying glasses, operation trays, wheelchairs, stretchers, X - ray machines etc. Inmates also stated that in most instances, wheelchairs and canes were provided by the ICRC.

One of the other issues raised by MOs is the lack of ambulances to transport inmates to the GH. While certain prisons like PCP and MCP were found to have at least one ambulance in their disposal, the other prisons did not. As stated by the MO at PCP:

“We have only one ambulance. If the ambulance is not available, we have to call a prison vehicle. A prisoner can only be transferred in a prison vehicle. In such a case, sick inmates can only be transferred in the hospital bus. This is problematic since the stretchers cannot be taken into the bus and the bus does not have the required equipment to provide emergency care.”

²⁶³Hospitals in Sri Lanka are categorized into Primary, Secondary and Tertiary Units. Primary Units are Divisional Hospitals. These only provide basic and day to day health care. There are no specialists. Secondary Units include Base and District Hospitals, and some General Hospitals. These hospitals have specialists who can treat patients referred from primary health care. Tertiary units include National Hospitals, Teaching Hospitals and few General Hospitals. These provide specialized consultative health care, with personnel and facilities for advanced medical investigation and treatment.

2.2. Supply of medicines

Most prisons reported they usually have an adequate supply of medicines to treat general ailments at any given time. According to the AD, it is the MOH that is responsible for all medical expenses of PHs and dispensaries, and is therefore required to provide adequate medical supplies to prisons. He further stated that prisons are instructed to submit an estimate for the upcoming year to the RDHS of the area in which the prison is situated, which allocates the supply of medicines according to the quota set for each prison. JRP has not been allocated a quota for medicines because the prison did not have a PH when it was initially built, and therefore has to obtain medicines through the quota of the Gurunagar Hospital.

It was stated by the AD that if the required medicine is not available at the regular supplier, funds are forwarded by the MOH to the concerned prison to buy the medicine at local pharmacies. However, upon further enquiries from individual prisons, it was noted that the MOH does not transfer any funds when there is a shortage of drug/ chemicals in a concerned prison. The usual practice, as described by the officers at the DRK branch at WCP, is when there is a shortage or lack of a particular drug/chemical at the PH, quotations are called from the State Pharmaceutical Corporation of Sri Lanka (Osu Sala) by the individual prisons. In cases where Osu Sala does not have a particular drug or chemical that is required at the PH, the prison calls for quotations from a private company that manufactures such drugs/chemicals. These quotations are then forwarded to the Prisons Headquarters, where the Procurement Committee evaluates them and selects a vendor to supply the required drug/chemical. The vendor then supplies the medicine to the required prison. Financial resources for the procurement of such drugs/chemicals are provided under the DOP budget line 1204 'Medical Supplies'. The Commission was informed by senior officers of the Prisons Headquarters that funds under this budgetary allocation are used to procure additional medication and drugs that are prescribed by MOs, but not received by the prison from the MOH supply of medication. Additionally, in smaller prisons SPs may authorize such procurement from a pharmacy from the petty cash account in case of an emergency. However, this is not followed in larger prisons like WCP, where there are a large number of regular requests for medicines which cannot be procured through petty cash. The DRK branch at WCP is responsible for calling for quotations at WCP. In all other prisons, the stores branch is responsible for procurement. Though most MOs confirmed the availability of most medicines, certain prisons like GRP and ACP stated they do not receive the required medicines to treat specific diseases like scabies, chicken pox etc.

Prisoners from many different prisons complained about the lack of specialized medicine and stated that they are most often prescribed only generic medicines such as Panadol, Piriton and over the counter painkillers for all kinds of chronic and serious illnesses. An inmate in BATRP stated thus:

"If we're sick and go to them for medicines, they'll only provide Panadol and say drink this. He [the doctor] won't ask whether/what we ate or not, he'll just give a Panadol and tell us to ingest that. The sickness won't heal. Even if I go again and tell him "sir, I'm not cured of that illness", he will still give Panadol only. He only provides Panadol for whatever illness we complain of."

When the issue of the lack of medical equipment and supply of medicines in prisons was raised with the AD, the Commission was informed that all requests for medical equipment and medicines should be sent to the MOH, following which the MOH may provide it if the requested medicines and equipment fall within the budget for that year. If it exceeds the budget it will be purchased only the following year.

It was found that when medicines were expensive or the PH did not have it in stock, inmates received their medicines through family visits by asking their family members to procure it for them, which MOs confirmed is a common practice. This was validated by the Medical Officer in-charge (hereinafter referred to as MOIC) PCP who stated, "We also give prescriptions to prisoners so that they can get the medicine through visitors". This was confirmed by an inmate in MCP who said, "If he [the MO] prescribes further medicine to be taken from outside [that is not available at the PH], we have to write it on a separate paper and give it to our family. When our family brings the medicine for us, then we are given that medicine". Obtaining medicine from outside is a problem for inmates who do not receive regular visits and those whose families do not have the means to buy these medicines. The medicines received via visits are then given to the dispenser who in turn gives it to the prisoner every day. However, it is at the discretion of the jailor who is on visit duty to allow the prisoner to receive these medicines. A foreign remandee in NRP said, "I needed multivitamins, he (husband) directly brought them here. Strepsils and allergy medicines and whatever, and they didn't let him give it to me. They didn't let him bring it in". The Commission also received a complaint from an inmate in WCP who stated that his medicines were taken by prison officers during visits and were not given to him.

In most prisons, the dispenser goes to individual wards to administer medicine to the inmates. However, certain categories of inmates, like those with drug related charges or mental illness, are made to take the medicine in the presence of the dispenser to ensure the medicines are imbibed by the prisoner at that time.

2.3. Sanitary conditions of prison hospitals

Most PHs visited were not found to be in acceptable conditions of hygiene and sanitation. The MOIC at WCP PH specifically stated the water at the PH was not sanitary to clean wounds and there were also stray dogs and cats in the prison and hospital complex. On average, PHIs were found to visit prison at least twice a month, with WCP and PCP receiving more than average visits. When there is an outbreak of any disease the MO must report it to the PHI, who will mobilize the resources needed to control it.

Additionally, it was also observed that most prisons did not have wards to isolate prisoners suffering from contagious diseases like chicken pox, TB etc. For instance, an inmate in ARP who had leprosy was not isolated but placed with other prisoners in the main ward. As stated by an inmate in ARP, "When one inmate is infected with a disease, even if it is common cold and cough, it spreads to everyone because there are no proper quarantine measures". It was observed at ARP, AOPC, CRP, PCP, HWC, POPC, NMRP, BATRP, BRP and JRP, that inmates

suffering from contagious diseases were either all kept together in the PH, or with other prisoners in their respective wards. During inspections, it was found that KRP, PCP and WCP were the only prisons with isolated cells for contagious diseases. However, inmates suffering from different contagious diseases were all housed together in the same isolation cell/ward at the PH and not separated by their diseases.

2.4. The maintenance of medical reports of prisoners

SMR 26 and Section 46 of the SRs state that all MOs must maintain an accurate, up to date file or register where details of every inmate who seeks treatment are logged. The SMRs stipulate an additional requirement of maintaining files for every inmate. The comparative national law does not contain such a provision.

All prisons were found to maintain records at their respective PHs, outlining all treatment procedures administered to prisoners, with notes including the patient's name, disease and the treatment prescribed. Files or books were also maintained for every patient who taken to a clinic outside the prison. In addition, a separate note or card is maintained for inmates seeking Out Patient Division (hereinafter referred to as OPD) treatment, so as to follow up for further treatment. These processes are in line with Section 46 of the SRs and SMR 26.

However, a uniform method of record maintenance is not followed in all prisons. For example, inmates seeking OPD treatment at JRP were given cards that were replaced every year, which made it difficult to identify an inmate's past medical records because they are not archived or maintained in a consistent manner and do not follow the same serial number every year. Inmates in ARP were given small chits of paper, but records were also logged in a separate file mentioning their illness and course of treatment. Similar methods were also observed in KRP, PCP etc.

A MO at WCP PH mentioned a project initiated by the ICRC in 2017 to computerize all medical records of all inmates to provide easy access to the required information to all medical care personnel in the prison system. As part of this, ICRC would provide the software as well as train medical personnel on how to use it. Reportedly, approval has not yet been granted at the ministerial level for the project to be implemented due to concerns about prisoners gaining access to it²⁶⁴.

One of the most important issues raised by both MOs and inmates is the delay in the transfer of inmates' medical records when they are transferred from one prison to another. This is a clear violation of SMR 26(2), which states that medical files, should be transferred to the health care service of the receiving institution, upon the transfer of a prisoner. Further, as pointed out by the doctor at ACP, when the medical records of the inmates are not transferred on time, all treatment plans are stalled since the doctor does not have the medical history of the patients which prevents the provision of any treatment thereby leading to the deterioration of the condition of the inmate. He further stated that he has written to the CGP about the issue regarding this matter and requests that whenever

²⁶⁴ For a detailed discussion, please refer to chapter Entrance and Exit Procedure.

transfers are made the medical records of those transferred are sent immediately to the relevant prison.

3. Medical personnel

3.1. Shortage of medical personnel

SMR 25(2) states that all prisons should be equipped with an interdisciplinary team of qualified medical staff. There is no equivalent national law that states the same.

Not all PHs are assigned the medical staff they require. On average, at the time of inspections, all prisons visited by the Commission were found to have one doctor who visits the prison at least four days a week, except at BATRP and WWC. SPs of all prisons except BATRP have informed the Commission that there is always a doctor on call in case of an emergency at all prisons. Larger prisons like MCP, PCP, WCP PH were found to have four to five doctors available who come to prison according to a roster system organized by the MOH. Not every prison has a chief nursing officer or nurses.

Table 10.1 sets out the stipulated cadre of medical personnel and current available cadre and table 10.2 sets out the MO-prisoner ratio across prisons.

Table 10.1 – DOP medical personnel cadre vs. availability

Medical Personnel	Cadre	Number of Medical Personnel ²⁶⁵	Vacancies
MO	40	19	21
Chief Nursing Officer	1	-	1
Nurses	78	36 (Male)	42
Public Health Inspector (PHI)	4	2	2
Registered Medical Practitioner (hereinafter referred to as RMP)	19	11	8
Medical Lab Technician	4	2	2
Dispenser	86	58	28

²⁶⁵ As of December 2017

Table 10.2 - Prisoners: Medical Officer ratio in prisons as at 14 February 2019

Prison	No. of Prisoners	No. of MO	Ratio
HWC	196	4	49:1
GRP	795	9	88:1
ARP	631	6	105:1
MCP	1677	15	112:1
BRP	353	3	118:1
NRP	1689	12	141:1
POPC	463	3	154:1
PCP	1480	9	164:1
KRP + KWC	769	4	192:1
WCP	3140	14	224:1
KGRP	692	3	231:1
WWC	255	1	255:1
JRP	557	2	279:1
BATRP	343	1	343:1
ACP	1083	3	361:1
CRP	1231	2	616:1

Source: Department of Prisons

As per Section 8 of the PO, the Director of Health Services (hereinafter referred to as DHS) with the concurrence of the CGP, is responsible for recruiting doctors for prisons, while all other medical staff are recruited by the DOP. There is a dispenser in each prison who provides the inmates their medicines every day. However, in WWC and MCP it was noted that, instead of a dispenser, a prison officer was in charge of distributing medicines. Additionally, where the number of medical staff members was inadequate, the CGP has the power to select inmates to serve as attendants, which was commonly seen in all prisons where convicted prisoners served as PH party. The Commission was informed that Party prisoners at WCP PH are given basic training by the medical personnel. Additionally, it was stated by the MOIC at WCP PH, that all prison officers are given a three-day training on first aid. Officers who complete the training and pass the examination are given a badge. It must be highlighted that the national health service available for persons with liberty would not employ laypersons as medical personnel to disburse medicine. Therefore, the practice of appointing unqualified persons as dispensers and attendants contravenes the obligation to provide prisoners with the same standard of healthcare as other citizens.

When the AD was queried about the lack of medical staff, for example nurses, he stated that it is the DOP which does not recruit enough medical personnel. When the DOP was queried about the reason for not recruiting nurses even though it is provided for in the cadre, the then CGP and then Commissioner of Administration and Intelligence informed the Commission that the DOP does not receive enough qualified applications and they felt that persons are reluctant to apply for these positions because they have to work with prisoners. However, they further stated that the DOP was in discussion with the military, whereby

former state sector medical personnel would be recruited for these positions. While this might resolve the shortage of medical staff, it does not address the root causes of the problem, which is that people are generally reluctant to apply for medical personnel positions in the correctional system, thereby leading to severe shortages.

Specifically, it was noted that there is a severe lack of trained medical personnel to handle issues relating to women and children. For instance, although the cadre does not mention separate categories for female nurses or medical personnel there were very few female nurses or female medical personnel, which according to the DOP is due to women not applying for these positions.²⁶⁶

3.2. Duties of the Medical Officer

SMR 31 lays down the powers and functions of the MO. In national law, Section 18 of the PO provides for the Minister of Health to make rules relating to the duties of the MO, which are outlined in Section 44 of the SRs. As per the law, the MO is to first treat sick patients for the day, after which s/he is supposed to check all the patients admitted at the time in the PH, and additionally check on all inmates working at Parties every day.

As per Section 131 of the DSO, MOs are responsible for the health of all prisoners. The duty of the MO is not limited to only treating sick prisoners, as s/he must make themselves familiar with the state of health of all prisoners.

Section 64 of the PO states that inmates who work should be regularly monitored and those who are found to be unfit should be given light work or prevented from working. The MO is also required to maintain a record of those for whom light work is recommended. During interviews with MOs, it was found that they do maintain regular records of those who are unfit and make recommendations for light work. However, the SP has the discretion to implement the recommendation. Additionally, even if new entrants were found to be unfit, they were still admitted to the work camp because work camps need human resources. It was also noted that irrespective of age and physical condition, inmates were assigned the same kind of work.²⁶⁷

It was observed that while the doctor checked sick inmates and patients in the PH, it was rarely the case that inmates were visited at their workplaces. Further, the MO is expected to check, at least once a week, all prisoners for whom a change in diet or labour is recommended, and all prisoners at least twice a month. It was found that MOs regularly recommend special diets for diabetic patients, and facilities permitting, inmates are provided such diets by the prison authorities. However, the Commission did not come across MOs conducting regular check-ups of all prisoners during inspections.

²⁶⁶ For a detailed discussion of the lack of gender-specific medical care, please refer chapter Women.

²⁶⁷ For a detailed discussion of the limited access to medical attention for inmates in work camps, please refer chapter Prison Work.

Further, as per Section 41 of the SRs a MO, in addition to their regular duties, must inspect the sanitary condition of the prison once every week, and every day when there is an epidemic and make regular reports to the DHS. Certain MOs, like those in ARP and WCP, were found to conduct regular inspections every week. However, this was not commonly observed in other prisons.

In addition, as per Section 50 of the SRs, the MO is to check if the inmates have enough quality water to drink, bathe and wash. However, during inspections, it was found that this was not done at any prison. SMR 35 and Section 55 of the SRs, state that the MO is required to check the quality of food that is being served to the prisoners every day and record any defects in a log and check the rations at least thrice a week. This too was not followed in practice in any of the prisons visited.

Section 61 of the SRs mandates the MO to send monthly reports on the morbidity and mortality in the prison to the DHS. When the AD was queried whether such a practice existed, he stated that such reports were sent by MOs, though not regularly. In addition, the MO is requested to send weekly reports of admissions, discharges and deaths in the prison for the previous week to the SP of the respective prison, who should then forward such copies to the CGP. Moreover, as per Section 126 of the DSO, the MO must also mention the average time spent every day in prison. It was found that most of these requirements were not followed in practice. In addition to the above-mentioned duties, MOs are also required to maintain comprehensive medical records for each inmate. It was noted that this too was not being followed in most prisons.

It also came to light that most MOs were not aware of their powers and duties under the PO, DSO and the SRs. The casual disregard by MOs of prison laws raises concerns of accountability and supervision since MOs do not have immediate superiors within their workplace, unlike in national medical institutions, as they do not come within the purview of the SP of the prison. This means that even if inmates lodge complaints about MOs with the prison authorities there is no direct action the SP can take other than forward the complaint to the MOH. The lack of adherence to provisions of the PO by MOs demonstrates that there is a lack of adequate oversight, regulation, monitoring and evaluation by the MOH to ensure that the quality of healthcare provided at PHs adheres to mandated standards.

3.3. Discrimination in the provision of medical care

SMR 32 and Principle 1 of Principles of Medical Ethics states that all medical personnel must hold the same ethical and professional standards as those applicable when treating patients outside i.e., all medical personnel must treat inmates without any judgment or bias and only medical factors should be taken into account when prescribing and providing treatment. However, the narratives of prisoners across prisons, except a few, illustrated discriminatory treatment of prisoners by medical personnel. For instance, it was reported across prisons that the doctors regularly ask new prisoners' details of their offence before treating them. An inmate in GRP illustrated this by saying:

"He (the doctor) once asked me, "Why are you here?" I said I was there to get medicine. People had told me that he would ask that. Then he said, "Not medicine, what is the case?" So, I said, "The case is that I was brought here for a murder charge." Then he said, "If you killed someone you should be able to bear sicknesses." That's what he said. We don't expect that from a doctor."

Inmates in NRP, ACP, JRP and KRP mentioned the doctor asks them intrusive questions about their case and barely any questions about their ailments. As said by a female inmate in ACP:

"Well the doctor asks me about the case, and when I say it's drug related, the doctor asks how much I've sold. Since we have not carried out any business, we can't answer those questions, and we are embarrassed at being questioned while trying to get treatment."

In particular, persons incarcerated for drug offences commonly stated they were subject to discriminatory treatment and judgmental comments. For instance, a foreign inmate in CRP stated the doctor assumes all foreign prisoners are in prison for drug charges and shouts at them instead of treating them. A YO in JRP mentioned that the doctor would refuse to treat them and disregard their medical issue if the person was in prison for a drug charge, and equalled any form of ailment to withdrawal symptoms stating that the illness was due to the lack of continued drug use. He also alleged that the dispenser hit them and scolded them in abusive language.²⁶⁸ It must be highlighted that persons seeking treatment from the PH are entitled to receive the same quality of medical care that they would receive outside the prison. Medical personnel inquiring from prisoners about details of their charges would constitute a violation of professional ethics. Moreover, it amounts to discriminatory treatment on the basis of their detention status and would prevent prisoners from being able to freely access treatment.

Complaints of medical personnel assaulting inmates, both verbally and physically have been made or have been brought to the notice of the Commission, such as the case of a dispenser in ARP hitting an inmate for refusing to drink water from the bottle that inmates with contagious diseases were using.

Some inmates also stated that doctors would not touch them or conduct physical examinations when they complained of medical problems and would instead keep them at a distance when providing a diagnosis. An inmate in GRP stated that, "When we go and say, 'doctor I have fever. I have a cold', he asks, 'What kind of a cold you have?' He won't even place his stethoscope. He gives medicines". Another inmate in PCP highlighted this by remarking, "But it's useless because the doctor has already prescribed medicine before we get there. We don't even get to sit on the chair next to the doctor. He has already prescribed medicine before I go there. It's not based on my symptoms". Inmates stated the way in which they were treated by doctors discouraged many prisoners from accessing medical treatment to avoid being subject to degrading behaviour.

²⁶⁸ The Commission received similar complaints from other inmates and has initiated an inquiry regarding the same.

It was also alleged that differential treatment based on an inmate's social status and income backgrounds existed. An inmate in MCP said, "It is a complete fraud. Only those who have money are treated, those who don't aren't treated". This was illustrated by an inmate in MCP, saying, "I am being told, if I can give Rs. 50, 000 and spend Rs. 15, 000 every fourteen days, I can go and stay at a bed in PH".

4. Access to medical treatment

4.1. The availability of types of medical treatment

Most prisons such as WCP, KRP, PCP, POPC and ARP were found to have the means to provide treatment for contagious diseases, such as Tuberculosis (hereinafter referred to as TB) and HIV and on an average, there are clinics held every month to screen male prisoners for TB and HIV. Additionally, most prisons except for JRP, ARP, ACP and WWC were found to have dental treatment for all prisoners with dentists, on average visiting the clinics at least four days a week. PCP is especially well-equipped in this regard because there is a dentist and a dental surgeon, both of whom are available six days a week.

However, there are no inhouse clinics for chronic diseases like diabetes, asthma, arthritis etc. It was found that the most prevalent illnesses by which prisoners are afflicted are orthopaedic illnesses, respiratory related illnesses, diabetes, cholesterol, neurological illnesses, gastroenterological illnesses, chest related illnesses, heart disease, blood pressure related illnesses, mental illnesses, ear nose and throat (ENT) related illnesses and eye sight and eye related illnesses.

The Commission found that ARP is the only prison with a permanent Ayurveda clinic. The medicines for the clinic are provided by the Ayurveda Cooperation and the doctor is required to send monthly reports to the Commissioner of Ayurveda Medicine of that area. WCP has also begun Ayurveda clinics, which take place every second Tuesday of the month, when a group of about ten Ayurveda doctors visit the prison with medical supplies, and the clinic lasts about four to five hours. The Commission observed that the WCP Ayurveda clinic was held in the temple premises, where the doctors would sit in the middle surrounded by patients in waiting. The Rehabilitation Officer at WCP stated that following multiple requests from prisoners, as well as the Commission forwarding requests of prisoners seeking access to Ayurveda treatment to the SP and the CGP, the initiative was started with the cooperation of the Ayurveda Hospital in Rajagiriya.

Health awareness programmes

Circular No. 24/2013 states that it is a duty of Welfare Officers to conduct health programmes to maintain the mental and physical health of the prisoners. Moreover, according to Circular No. 23/2012, HIV/AIDS preventive programmes should be conducted for the benefit of both convicted and unconvicted prisoners by the Welfare Officers, with the help of prisoners appointed as Peer Leaders. A monthly report on such programmes should

be sent to the Commissioner Rehabilitation. As per the said Circular, printed material and DVD players have been distributed to most of the prisons to be utilized in said programmes.

The Commission observed that prisons conduct health awareness programmes on STD and/or HIV/AIDS, and a few mobile clinics were observed in some prisons. For example, in BATRP, a HIV awareness programme was held once a week and a health camp once a month. In WWC, health programmes on TB, HIV and STD were said to be held. In POPC, it was mentioned by a Rehabilitation Officer that they train about fifty inmates twice a year as Peer Leaders to raise HIV awareness amongst prisoners. Such Peer Leaders were commonly observed in other prisons too.

4.2. Length of time taken to receive medical attention

9% of male respondents in the total study sample stated they had to wait one to two hours the last time they needed to see the doctor, while another 9% stated they had to wait less than fifteen minutes. Among the female respondents, 9% stated they had to wait one to two hours, while 8% stated they had to wait less than fifteen minutes.

Across prisoner categories, from the male sample, 16% of life prisoners stated they had to wait one to two hours before they met the doctor the last time, while 14% of condemned prisoners stated the same. Across prisoner categories, from the female samples, the majority respondents in each category, 29% of life prisoners, 22% of condemned women and 8% of remandee women, stated they were able to meet the doctor in less than fifteen minutes.

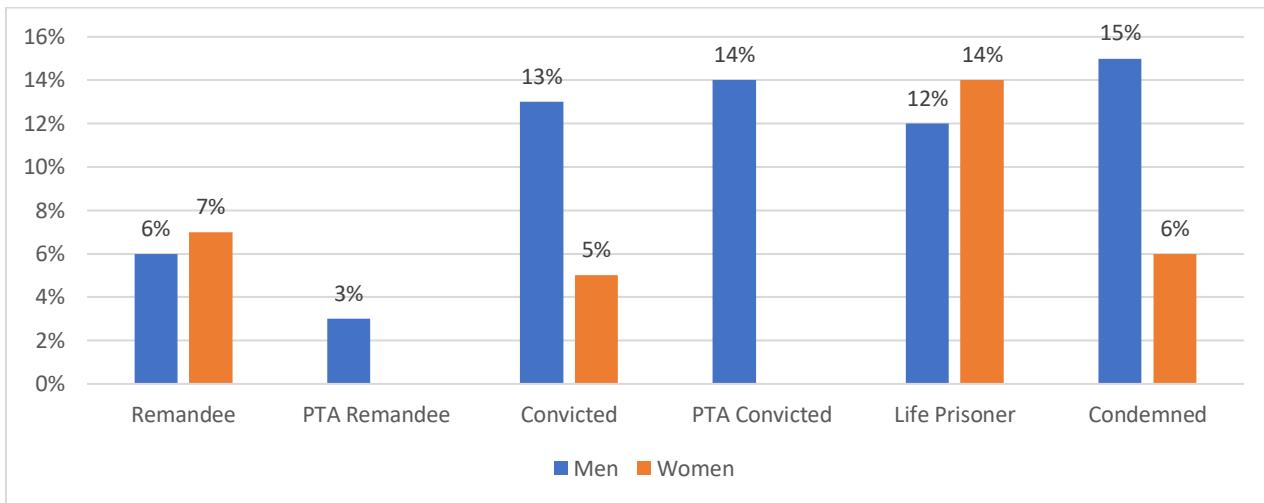
Across prisons, of the male respondents, 19% in WCP said they had to wait one to two hours before seeing a doctor, while 13% in NMRP, 12% in GRP and 11% in CRP stated the same. Across prisons, the majority of female respondents in KRP, ACP, PCP, ARP and BRP stated that they had to wait less than fifteen minutes or were taken to the doctor as required. However, in JRP 30% of the female respondents stated they were not taken to the doctor as required. The shorter period of time female respondents have to wait to be taken to see a doctor can be explained by the fact that there are only a small number of female prisoners in each prison.

In the study, of the total male respondents 37% stated that they requested medical attention in the last twelve months, of which 11% stated they were refused medical care. Of the total female respondents 38% stated they requested medical care in the past twelve months, of which 7% stated they were refused medical care. For example, one convicted woman housed at WCP stated:

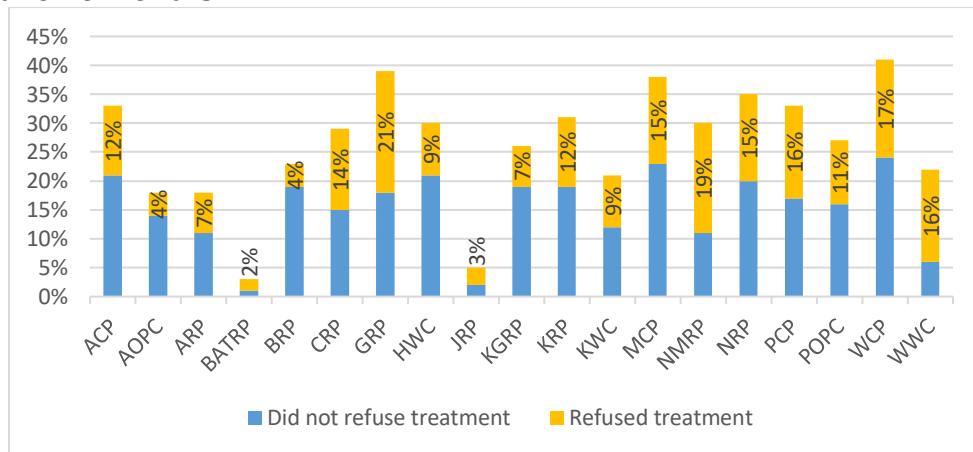
“We can go to the doctor twice a week – Monday and Thursday. When we go after party work the doctor would scold us saying they have to go to other places. In some cases, they even refuse to check us. Some doctors even don’t care about us to provide any medicine.”

The graph below illustrates the number of male and females across prisoner categories who were refused medical treatment, when requested.

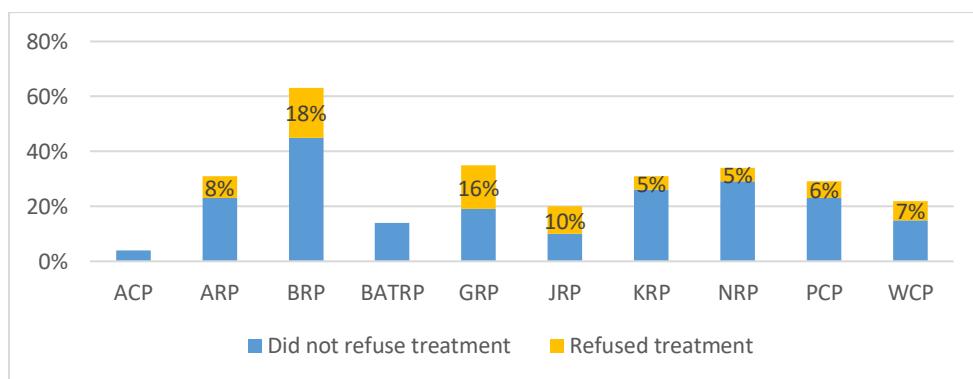
Graph 10.1 – Male and female respondents across prisoner categories who were refused medical treatment in the past twelve months



Graph 10.2 – Male respondents across prisons who were refused medical treatment in the past twelve months



Graph 10.3 – Female respondents across prisons who were refused medical treatment in the past twelve months.



In one instance, the Commission was informed of an incident where an inmate from MCP had hung himself because his illness was causing him a lot of physical pain and he was not being provided the medical care he required. The deceased was reportedly suffering severe pain due to a wound on his leg, which had become infected, and he was not receiving any treatment for the pain. He had mentioned to a few fellow prisoners that he was contemplating suicide.²⁶⁹ The Commission was also informed of an instance where prisoners went on hunger strike to compel the administration of a prison to transfer an ill prisoner to a hospital to undergo surgery. The said prisoner had finally been taken for the surgery but the prisoner who initiated the hunger strike had been transferred to another prison, supposedly as punishment.

It must be noted that the qualitative data revealed that because inmates have knowledge of the times during which the doctor is available, they only request medical attention during that specific time period, thus reducing the waiting time. For example, when a prisoner in NMRP needs to see the doctor for pain in the abdomen in the night, the prisoner would have to wait until after the morning unlock the following day for the doctor's office in the prison to be opened. After the morning unlock, the prisoner would inform the officer in charge/party prisoner arranging prisoners to go to the doctor's office and then would be allowed to see the doctor. The prisoner would then wait in front of the doctor's office in the line to see the doctor- it became evident that many prisoners counted only the time spent waiting in line as the 'waiting time', and not the period from the time they required medical treatment until they saw a doctor. This, data therefore, is not an indication of the actual time waiting to access medical care. For example, one male convicted PTA prisoner from PCP stated, "We can only see the doctor if he is here. If we get sick today, we can only see the doctor tomorrow. If we are sick the officers give us Panadol. That's it". This was echoed by a male life prisoner from WCP who stated:

Q: How long do you have to wait before you can see the doctor?

A: The doctor comes every day to the party at 1000h and stays in the office. Then takes sick people from party to party. He prescribes the medicine and we can go to the dispensary and get the medicine.

Q: What happens in an emergency situation?

A: Then our dead body will only go out of the ward. If they take us out at 0700h it will be 0900h by the time they hand us over to the PH. By that time, the person is dead."

4.3. Access to medical treatment at night

Access to medical assistance at night is also an issue of concern, with many prisoners complaining about the long delays in transporting prisoners to the hospital in case of an emergency, which inmates alleged has resulted in deaths.²⁷⁰

²⁶⁹ For a detailed discussion of deaths caused by suicide, please refer chapter Death in Prison.

²⁷⁰ For a detailed discussion on lack of access to medical care, please refer chapter Death in Prison.

Section 54 of the DSO states that jailors must make regular rounds at night and if there is a medical emergency, immediately inform the night in-charge officer. If the cases are serious, immediate arrangements should be made to treat the inmate. However, in practice, inmates stated that they would have to shout at night to attract the attention of the jailor, and even when they managed to attract the attention of the jailor, it would take close to an hour for the doors to be unlocked, because the keys for all wards are kept in a different section. When inmates were queried how long it would take for them to be transported to the hospital at night, the response "They will only take us once we are dead" was commonly received. An inmate in PCP said:

"It's hard to go to the hospital outside, most of the time they say that there are not enough officers. Even if we get chest pain, they need to finish the prison formalities to release us from the gate by getting our files and other documents. There are people who have died due to this delay."

Inmates in all prisons visited stated that it is only in very rare circumstances that officers take them to a doctor or call the doctor if they fall ill at night. Further, very few doctors were available at the PHs at night time. Though most doctors are on call, based on the narratives of prisoners, it appears the doctors on call are not often summoned when someone falls ill at night. In most cases, the prisoner has to be in pain until the doctor comes the next morning, as scheduled. An inmate in ACP stated, "If you suddenly fall sick at night the doctor won't come, someone else will come and give medicine most of the times. They will send you to the doctor at ten in the morning". This points to the need for on-site doctors at all times, which was reiterated by the then CGP thus, "We need permanent doctors. Not just visiting. We need at least three doctors for a prison. For a prison like WCP we need at least ten doctors".

Where access to emergency medical care at night is concerned, certain groups, such as prisoners on death row, are particularly disadvantaged due to the conditions of their imprisonment. In the case of condemned prisoner, the keys to individual wards are kept at the main gate and the guards on duty take considerable time to obtain it from the main gate. Condemned inmates at various prisons described it thus:

"Now difficulty in here is that if there is a sudden illness like a heart attack when our wards are closed, then we have to inform the officer in-charge of the ward and he has to go and bring the keys. That key has to be brought from there by an officer and then the person will be taken to PH. We have those kinds of difficulties and because of this, people have passed away. A few prisoners died while being taken to hospital because of delays in being taken from the ward."

Condemned, PCP

"If someone falls sick in the cell, we have to shout and call the officers. Even two days ago when someone fell sick, the other inmates in the cell had to shout

for about forty-five minutes to get the officers to come and take the sick person. Even then they would take him to the PH and call a doctor and would have to wait until the doctor comes; they wouldn't directly take the patient to a General Hospital despite the seriousness of the illness."

Condemned, ACP

"Sometimes they don't come even come to check what's wrong when we shout out loud when someone is in a critical condition. Recently, they only showed up when that person died."

Condemned, WCP

"In most cases of an emergency situation, there is no doctor to prescribe medicine... The person who was in my room died at once due to a heart attack in Welikada. He died in my arms."

Condemned, KRP

4.4. Transfer of sick inmates to General Hospital

SMR 27, Section 69 of the PO and Section 44 of the SRs state that when the facilities at the PH are not adequate to treat an inmate, s/he must be transferred to an external medical facility immediately. Additionally, SMR 27 (2) states all clinical decisions must be taken only by medical professionals and the decisions taken by such professionals must not be ignored or disregarded by non-medical prison staff.

Inmates are taken to a hospital outside for either a scheduled visit to the doctor or for admission when the facilities in the PH are not adequate.

In the study, of the total sample, 5% of men and 4% of women said that in the past twelve months, the doctor had recommended their transfer to GH one to five times. Across prisoner categories, of the male prisoners, 14% of the condemned, 12% of the life prisoners and 4% of PTA prisoners were asked to be transferred to a GH one to five times. Of the female prisoners 29% life prisoners, 22% condemned prisoners and 5% convicted women stated that the doctor recommended their transfer to a GH one to five times in the last twelve months. Of all male respondents, across prisoner categories, 8% of the life prisoners, 6% of the condemned, 4% of the PTA inmates and 4% of the convicted men stated they were denied transfer to a GH one to five times.

During the study the Commission received a total of 144 medical complaints from prisoners. The common theme that runs through these complaints is the inadequate medical treatment provided by the PH and the delay, on the part of prison authorities, in taking inmates for scheduled clinics and operations. Inmates have said that even though the doctors have diagnosed and recommended the next course of action, the prison authorities did not take the necessary steps.

When the doctor comes across an inmate who requires admission, s/he issues a form titled 101 in relation to the inmate. All admissions for which the Form 101 is issued are those that require immediate care. However, admissions are also made for other purposes, like obtaining an X-ray and Magnetic Resonance Imaging (hereinafter referred to as MRI) scan through a direct referral by the PH doctor to the GH. The Commission observed that prison authorities only admitted a fraction of those issued the Form 101 to the GH. This was described by an inmate at WCP, who said:

“She (Doctor) told them to send me immediately and issued a 101 to send me. It was issued at around 1000h but I wasn’t taken. She stopped seeing patients and came to the front and gave a call to this place. There still wasn’t permission. Then that madam stopped seeing patients and came here to check. Then she shouted at the jailor to send me immediately. That’s when they sent me.”

When inquired if prison authorities have the discretion to decide who is to be admitted, the AD said that such power lies solely with qualified medical personnel, and if decisions of the prison authorities adversely affect the life of an inmate, the medical personnel will not be held accountable. Further, the AD and a number of prisoners stated that doctors might provide the Form 101 to patients whom they favour but who did not necessarily need to be admitted to the GH, or that prison authorities might exercise their discretion to prioritize certain prisoners over the others. This would constitute a clear violation of SMR 27 (2), since it was observed that prison authorities often made decisions that override or ignore the decisions and recommendations of medical personnel. However, this was observed to be due to larger structural issues that all prisons face which will be discussed below.

A male life prisoner in MCP complained of unbearable pain in his stomach and stated that the consultant surgeon in the GH had asked him to be admitted to the hospital for a surgical procedure, but the prison authorities did not do so. This male life prisoner showed the Commission his clinic book where the Commission observed multiple dates for the surgery had been missed for the past two years. Similarly, an inmate in NRP complained about not being taken for a scheduled endoscopy for three months and another elderly prisoner complained he was suffering severe pain because he was not being taken to the hospital to treat his hernia. Complaints of a similar nature were frequently received from prisoners around the island in relation to being transferred to GH.

When inmates have to be moved to the PH for further treatment, the MOIC at the WCP PH mentioned if a MO has recommended admission to the PH, the prisoner will readily be admitted and beds will be allocated according to need. However, prisoners have complained to the Commission that beds are often allocated on the basis of favouritism and preferential treatment.

Accessing specialty clinics at General Hospital

Prisoners also complained of not being taken for their scheduled clinic dates, which was a common complaint received from all prisons visited. Clinics²⁷¹ that prisoners are often referred to include cardio, ENT, skin, STD and TB. In the case of some prisons, such as ACP, there is no GH near the prison, resulting in prisoners having to be taken to a GH that is miles away. Prisoners from ACP for instance have to be taken to GH in Tangalle or Hambantota, which are thirty to fifty minutes away, respectively, for scheduled tests and clinic dates. As an inmate in MCP described it:

“I have arthritis. Even if these doctors refer us to a clinic, they [prison authorities] won’t take us. They say there aren’t any officers and wait. It has happened to me countless times so I don’t go now. I take the medicine that is given. That is the Panadol, diclofenac tablet and a painkiller.”

Prisoners have also said that it would take months and sometimes years to be taken for a scheduled clinic date. For example, prisoners have complained about delays in getting their eyes checked, resulting in the impairment of vision. Where the prisons in Colombo are concerned, prisoners from CRP, NMRP and WCP are all taken together in the same bus for clinics to the GH. Inmates have said that, in practice, the inmates are all taken to the WCP PH before being taken to the NH for their respective clinics, whereas reportedly earlier, sick prisoners from the individual Colombo prisons were taken directly to the NH instead of via PH. With the aim of making the transfer and transportation of inmates to NH and clinics more efficient, WCP PH was made the hub for medical treatment for the Colombo prison complex, whereby all sick inmates are now first taken to the WCP PH before being taken to the NH.

It was observed that this move has instead further delayed the treatment of inmates as the lack of human resources seems to continue to adversely impact the transfer to GH. For instance, even though inmates are taken to the GH, due to the shortage of officers not all are taken to their respective clinics at the same time because there aren’t enough officers to accompany all prisoners. This results in prisoners being taken inside GH in batches. Hence, by the time some prisoners are taken it is well into the late afternoon or evening by which time the doctors would have left or the clinics would have closed. For instance, prisoners have stated that in most instances they would be taken in the bus on their scheduled clinic date, but would never actually be taken inside the hospital for the appointment, and instead would be made to sit inside the bus the entire day and be brought back to prison at the end of the day. An inmate at WCP stated as follows, “Sometimes when they take us, they make us sit in the bus the entire time and bring us back without seeing the doctor”. Inmates who would have fasted the previous day for their blood test the following day would be brought back without the test being done. Inmates who have clinics at Maharagama Cancer Hospital do not reach the hospital in time for their scheduled clinics or tests due to the delay caused by transiting at the WCP PH. This practice reportedly deters prisoners from seeking medical treatment.

²⁷¹ Clinics are appointment dates given by government hospitals for patients who need to visit the doctor on a regular basis.

When the Commission visited ACP in December 2019 the doctor at the PH informed the Commission that even after repeated requests, the prison authorities had not taken an inmate to the GH for a psychiatric evaluation. Further, the doctor stated that this prisoner had been transferred from WCP along with hundreds of other prisoners, without their medical reports being sent along with their prison records. Due to this issue, the doctor was unable to confirm the patients' history, which resulted in the doctor ordering a proper psychiatric evaluation of the prisoner. Later, as the prisoner was not sent for an evaluation, the said patient had attempted suicide, which the doctor suspected was induced by his mental condition.

Special category prisoners, such as the condemned or those detained under the PTA, are particularly adversely impacted. The Commission has received complaints from PTA prisoners who were not being taken for their clinic dates, in particular the case of a prisoner with cancer and another with heart disease at NMRP. The reason for the delays in transfer and frequently missed clinic dates is because, in addition to the structural issues related to staff shortage, prisoners categorized as special are transferred out of prison only with the escort of special armed guards, which the prison obtains from the police. SPs of Colombo prisons have stated that the police have informed them to make their request for escort only on the day prior to the escort. This sometimes results in the police stating they do not have adequate personnel to spare for escorts to the hospital and not turning up at prison. The cancer patient at NMRP for instance missed several clinic dates since July 2017.

4.5. Reasons for the delay in transferring inmates

Staff shortage

The prison authorities reported that the failure to admit sick inmates to the GH and the inability to meet scheduled clinic dates is due to the severe shortage of staff. When inquired about the long delays in transferring prisoners to NH, the then WCP CJ Mr. Prasad Premathilaka stated that due to the severe staff shortage, the prison authorities have to prioritize transfer based on urgency and also instructions issued by court and requests made by the Human Rights Commission to produce a prisoner either to the JMO or send to hospital for treatment. Hence, even though a date had been given for surgery, if there are no vehicles available or no officers available to escort the prisoner, the surgery date will be missed. In addition, WCP CJ also stated that there had been many instances when prisoners with non-life threatening but chronic or long-term ailments have missed their long-scheduled clinic or surgery procedure due to the medical emergencies of other prisoners.

There are also instances of convicted prisoners not being prioritized for transfer due to the court ordered treatment of prisoners who have access to court, such as remandees and convicted on appeal. In one example WCP CJ stated that due to a court ordered medical treatment of a convicted prisoner on appeal several condemned prisoners who had been in pain due to conditions, such as piles, for many months were not able to be taken to the NH.

In certain prisons like PCP, WCP and ARP, special category prisoners like the condemned and PTA are accompanied by a guard or an officer in charge. This is done as a security measure and to prevent special category prisoners from fraternizing with the other prisoners. WCP CJ, Mr Premathilaka mentioned to the Commission that one prisoner housed at WCP requires tight security while being outside prison due to multiple death threats and demonstrated to the Commission how the prisoner has to be escorted by foot from WCP to PH while being surrounded by officers (armed and unarmed) in a tight circle, as vehicles are not available to be allocated as required. This indicates that the lack of officers available to escort prisoners would therefore directly affect their access to medical attention. Officers across prisons stated that, due to the severe shortage of staff, the DOP is always forced to make difficult choices, which often amounts to having to prioritize overall administrative efficiency over the interests of individual prisoners.

This was affirmed by the MO at WCP PH who said, "We have to refer patients to the NH for X-rays as the X-ray machines at WCP PH were observed to be not functional. However, these patients are not taken to the NH for scans due to lack of prison officers to escort them. The officers give priority to court duties and the patients are helpless when they are short of staff". The MOIC in WCP PH expressing similar sentiments, stated that the delays in transferring prisoners who have been referred for MRI/CT scans creates numerous difficulties as, although they may not be urgent cases, it is extremely difficult to secure a slot for an MRI or CT scan at the NH. A jailor from WCP explained the resultant burden on prison officers thus:

"Officers can't function according to the PO. We cannot follow the PO when it comes to duty because we don't have enough officers. The system is lacking about 1500 guards. Every officer is performing multiple duties. That's not what the PO says. It says that an officer should have one duty, so that they can become an expert in it and be responsible for it. Now one person has to do three things, and over time, none of the three things are done properly."

Section 77 (2) of the SRs state that the prison authority must provide as many officers as required for the safe transfer of prisoners to the hospital. However, it must not exceed more than four officers to transfer the first ten prisoners and an additional officer for an additional five inmates. The rule however does not stipulate the number of officers required for the transfer of special prisoners. The Prison Headquarters informed the Commission that the number of officers required to accompany a special category or high-profile prisoner is decided by the respective RC officer, who is authorized by the SP of that prison. This decision is dependent on the prisoner profile, the case etc. There is no law or circular that stipulates the number of officers required to accompany certain categories of prisoners. At a joint meeting with the SPs of WCP, CRP and NMRP the Commission was informed that in practice, to transfer one special category prisoner to the hospital, two prison officers with arms, one jailer, one sergeant and two police officers²⁷² are required. In certain cases, it was reported that even if the prison authorities managed to obtain the required human resources, the

²⁷² Police STF- The prison authorities obtain the assistance of police STF when they require additional security for the transfer of special category prisoners.

police officers would not come on time, thereby causing delay in transporting inmates for clinics.

Further, the SPs of WCP, CRP and NMRP mentioned that due to the shortage of officers it was difficult to allocate officers to accompany prisoners when clinics of different specialties are scheduled on the same day. Therefore, in practice, the prison authorities have to make a judgment call on who they think requires immediate medical care. When queried about this decision-making process, the SPs informed the Commission that it would depend on the number of inmates for the particular specialty or the severity of the case. However, it was mentioned that there would be enough time to handle only a maximum of two specialties per day, since there were not enough officers to accompany prisoners for clinics to different specialties simultaneously. As stated above, while the inmates for one clinic are taken, the others are made to wait in the bus. The officers who escort the prisoners decide which clinics to handle for the day. Since all inmates who have clinics scheduled on a particular day are taken to the GH, those whose clinics are not chosen for the day are brought back without receiving any treatment, resulting in a severe delay in the treatment of prisoners.

Officers at WCP PH have suggested that the NH schedule clinics for a particular specialty on a specific day every month where the doctor only treats prisoners, so that all prisoners for that specialty can be taken together. The Commission has written to the Director General of Health Services (hereinafter referred to as DGHS) requesting such measures be taken and the AD informed the Commission that the DGHS has written to NH to schedule clinics in such a manner and is awaiting their response.

Following the joint meeting held by the Commission with the SPs of CRP, WCP and NMRP with regard to the urgent medical needs of prisoners, steps were taken by the individual prisons to expedite medical treatments. In a specific instance, the SP of NMRP at the time made extra effort to transfer a special category prisoner who had cancer directly to the Maharagama Cancer Hospital, instead of making him transit at WCP PH, which was the regular practice. However, the Commission was again informed by the prisoner that when the SP changed the previous practice of sending via the PH had been resumed resulting in the prisoner once again missing clinic dates, illustrating that practices are not institutionalized but are dependent on individuals.

Due to the severe staff shortage, both WCP and the Commission have written to the MOH requesting a separate ward for prisoners in every GH, so as to better manage officers to provide security. When the Commission raised this issue at a meeting with the DGHS, he stated that it is impossible to assign a separate ward for prisoners because it would require doctors of every specialty to visit the ward every day, which, according to him, would be hard to schedule.

Lack of means of transportation

Upon inquiry, the Commission learned that WCP has two buses and two vans while NMRP has two buses and one van.²⁷³ Buses are used for prisoner related duties for the most part, while the vans may also be utilized, in addition to prisoner related duties, for administration purposes of the prisons. Every day, both WCP and NMRP must prioritize court duties, such as WCP escorting prisoners to the Supreme Court and the Court of Appeal and NMRP escorting prisoners to Magistrate Courts, High Courts and the Court of Appeal. This means both prisons do not have access to a readily available vehicle to transport prisoners to clinics at the NH. Hence, they request escort assistance from CRP which has twenty-three buses, but as Escort Branch officers informed the Commission, only nineteen of the twenty-three were in working conditions, at the time of the query. The four buses that were out of service had been sent for repairs. While minor repairs can be done at the prison garage, complicated repairs require a time-consuming procurement process, which results in long delays.

CRP also has two vans and one smaller A/C bus to escort children as per court orders.²⁷⁴ In addition, the CRP Escort Branch is tasked with escorting inmates to and from the NIMH in Angoda, as and when ordered by the court. CRP must utilize their buses first for court escorts, and since both CRP and NMRP are remand prisons, they have to allocate multiple buses for court duties, since they are tasked with escorting hundreds of remandees every day to and from courts. These three prisons in the Colombo prisons complex held a population of 6520 inmates as of February 2019.²⁷⁵ Thus, there are only twenty-three buses at the service of 6520 inmates for a variety of purposes including, transfers to court, transfers to hospital and transfers to other prisons.²⁷⁶

Officers of the Escort Branch stated that it is not practically possible to attend to court duties and to cover all clinic duties, in addition to any other emergency requirements, such as having to escort a high profile/high security inmate from a Colombo prison to an out of Colombo prison, which may require a dedicated bus for just one prisoner. Officers also stated that due to the severe staff shortage and the lack of vehicles, sending multiple vehicles for clinic duty, for about fifteen clinics per day is not possible. As discussed above, officers are forced to spend considerable time at one clinic, which may also reduce the time available to produce inmates to other clinics.

Escort Branch officers further explained that while the situation in the prisons in Colombo is as such, the situation of the prisons outside of Colombo is worse. While the prisons in Colombo can at least share vehicles amongst the three institutions in order achieve optimal utility for each bus according to need, a prison outside Colombo may have only one bus for all duties.

²⁷³ Commission made inquiries in February 2019

²⁷⁴ CRP Escort branch is tasked with escorting children between courts and probation homes, remand homes, treatment centers, hospitals, JMO office, in Colombo and nearby areas. For more information on the Escort Branch's duties related to children refer to the chapter on Young Offenders

²⁷⁵ This number does not include the inmates housed at PH. WCP 3413, NMRP 1788, CRP 1319

²⁷⁶ For a detailed discussion on hardships faced by inmates during transfers to court, please refer chapter Legal and Judicial Proceedings.

5. Other obstacles to accessing medical care

5.1. Inmates facing harassment when requesting medical attention

Many prisoners reported harassment and abuse of inmates when they sought medical care. For example, a PTA inmate in ARP mentioned that the dispenser would purposely give their medicines last and make them wait until he has seen all the other inmates. He described it thus, “If he sees us, he will say, you guys come last. After everyone else is treated, then he will take us.” Prisoners have reported that prison guards often verbally abuse inmates who ask to be taken to the PH regularly. However, the practice observed in both remand and closed prisons is that inmates are usually able to go to PH by themselves, and only special prisoners are required to be escorted by prison officers from their wards to the PH.

The Commission was also informed by inmates that at times when prisoners request to be taken to PH during the specified time because they fell ill after other prisoners from their ward were taken to the PH the officers refused to do so. An inmate in MCP²⁷⁷ said:

“If we ask them to take us to the PH, they just ask why we didn’t go to the PH when they took people to the PH in the morning. Did you see the one they took now? They took those people to the PH. Suppose there is a critical patient. If he asks to be taken to the PH he’d be scolded saying “Why didn’t you come when we took the others to the PH. We can’t take you now. Come back tomorrow etc.”

A remandee at BATRP similarly said, “Moreover, even if the pain is severe, they will take us to hospital the next day or after three to four days. They make us suffer, without taking us immediately.”

It should be noted that as per Section 198 (1) of the SRs, the prisoner has the option to be treated by a doctor other than the MO, i.e. to access private medical care, provided that they pay for it themselves. However, when such a request is made the SP has the discretion to decide if such treatment should be allowed. The Commission noted a couple of instances of prisoners making such requests, which were approved. Further, any medicine prescribed by such a doctor can be accepted into prison only with the consent of the SP.

5.2. Language barrier

Another common issue that was raised is the language barrier that exists between prisoners and medical personnel in the PH and the GH. When inmates do not speak the language spoken by the doctor, they would obtain the help of other inmates to translate. This was mostly seen in the case of Tamil prisoners and some foreign nationals, who said that they are

²⁷⁷ At MCP, most remandees are held in an area that is sectioned off from the rest of the prison, including the PH, and so remand prisoners are not free to visit the PH any time they need to, but would instead have to be escorted by prison officers.

not able to obtain the treatment they require because they cannot explain their illnesses in detail. In this regard, the Commission has received several complaints from prisoners requesting to be transferred to prisons closer to their hometown so that they will be able to obtain treatment by a doctor who is proficient in their language.

6. Mental health and care in prison

"We wake up early. We wash our face and exercise. We sit and worry the rest of the day. I worry about my family and how my children are not talking to me and if they have any means of going to school. Now my family is split and I am like an orphan. The more I think about it, the sicker I get."

PTA Prisoner, ARP

SMR 109 states that an inmate suffering mental illness, whose condition is exacerbated in prison, must be transferred to an appropriate facility outside to be treated. Principle 20 of the UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care²⁷⁸ specifically refers to criminal offenders who are determined to have a mental illness and requires that 'all such persons should receive the best available mental health care' in line with the standards mentioned in the instrument. Section 69(2) of the PO also provides a provision for the transfer and treatment of mentally ill patients specifically in a hospital outside when the prison does not have the infrastructure and facility to treat such inmates.

The conditions in prisons can create stress and take a heavy toll, particularly on those who are emotionally vulnerable, such as those with pre-existing psychological or psychiatric conditions. One of the most striking issues noted during the study is the incarceration of mentally ill persons who were seemingly often arrested and remanded not for a crime but because they were homeless and being disruptive in public spaces. The prison system therefore provides shelter and food, and additionally assumes a degree of monitoring and oversight of the person's health status. In most cases, they are transferred from prison upon the order of a judge to the NIMH, Angoda for treatment. However, in almost all cases they are brought back to prison after a short stay because NIMH does not have the facility to house and treat mentally ill prisoners in the long term. The MO assigned to the mentally ill ward in WCP PH stated that the lack of officers also results in long delays in transferring mentally ill prisoners to NIMH. Further SMR 109(3) states that mentally ill prisoners must receive continued psychiatric treatment from the prison authorities but no such support offered by prison hospitals because they are not equipped to provide such treatment and support.

The Commission also came across inmates declared mentally incapacitated to stand trial, but who are still in prison because they have nowhere to go. For example, in BATRP a mentally incapacitated man, who was found unfit to stand trial, has remained in prison for at least the past ten years because he has no other place to go. The NIMH reports on the prisoner state

²⁷⁸ Adopted by General Assembly resolution 46/119 of 17 December 1991

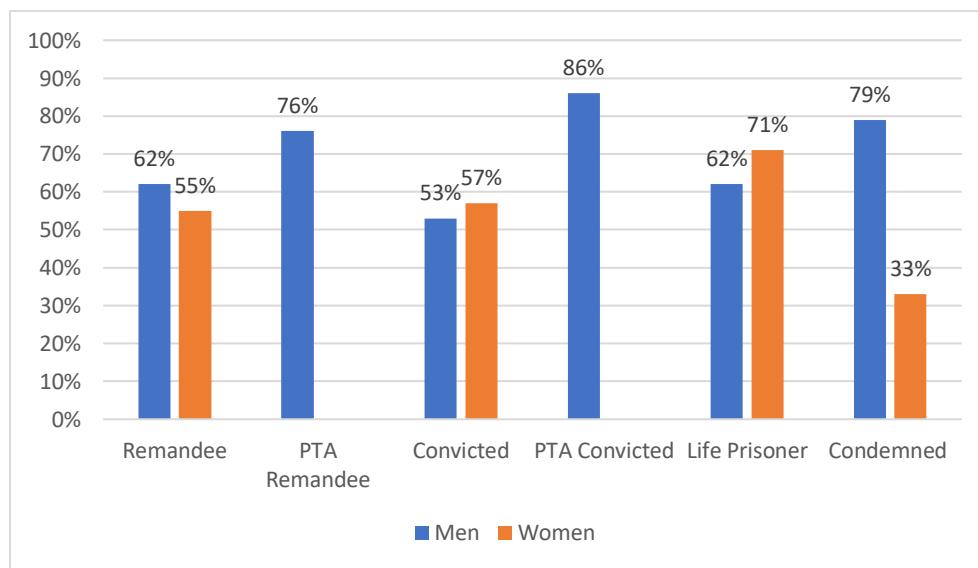
the patient suffers from severe cognitive impairment due to long standing schizophrenia and front lobe atrophy, the effects of which are permanent and progressive in nature, and thus he needs around the clock in-patient care. Yet he remains in prison, although at the time there was no functioning PH at BATRP. The prison system is ill-equipped and ill-qualified to take care of such persons, as there are no long-term institutions to treat and care for mentally ill persons in Sri Lanka.

6.1. Self-harm and suicide attempts

"Because my family did not come to visit me, I thought there was no point. I was very sad. Also, I was kept in the Chapel...yes, I was there for a week when I first went. There were nine prisoners in the cell so there was not enough space. I was on the top of the building on the third floor. Next day I tried to jump out."

In the study, of the total respondents, 60% of men and 55% of women stated they have experienced depression, anxiety and sadness to a level where it interferes with their daily tasks and everyday functioning.

Graph 10.4 – Male and female respondents across prisoner categories who stated they had experienced depression anxiety and sadness to the point that it interferes with their daily functioning

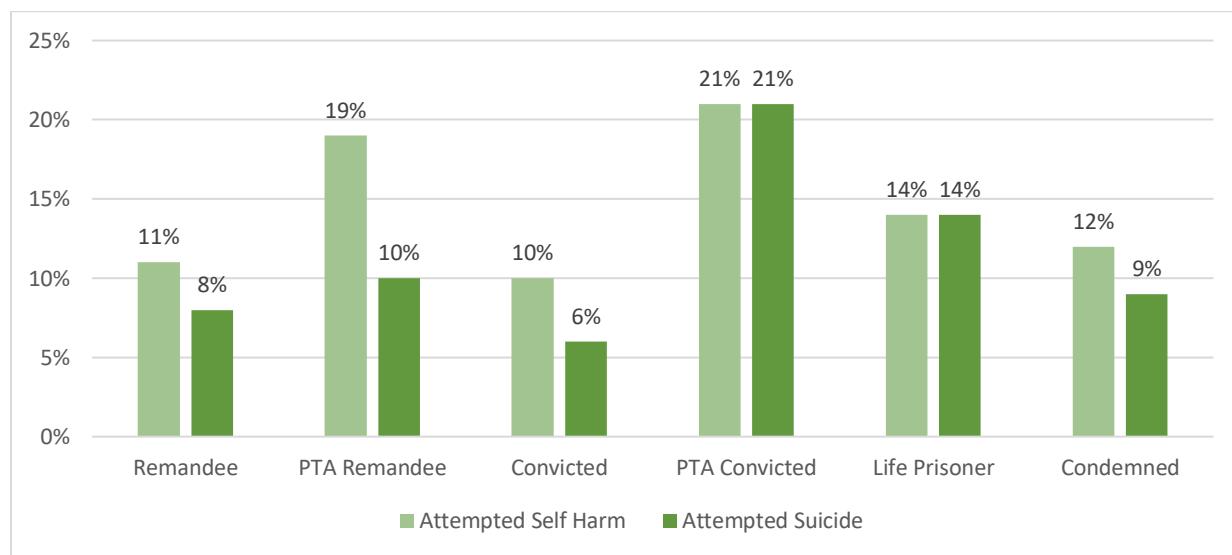


Quantitative data indicates that higher levels of depression are present among prisoners who have been in prison for a long time, and in particular, prisoners whose imprisonment is indeterminate, i.e. PTA remandees, life prisoners and condemned prisoners.

Inmates who self-identified as experiencing some level of depression, which can be caused by a myriad of reasons, such as substance abuse, pains of imprisonment, severe material deprivations, highly restricted movement and liberty, lack of meaningful activity, lack of quality family time, a near total absence of personal privacy and fear about potential danger, do not receive the psychological support they require from the prison system. Most prisoners react to the extreme psychic stresses of imprisonment and tend to have suicidal tendencies.

Of the total respondents, 11% of male and 7% of female respondents stated they have attempted self-harm in prison. Additionally, 7% of male and 4% of female prisoners stated they have attempted suicide while in prison.

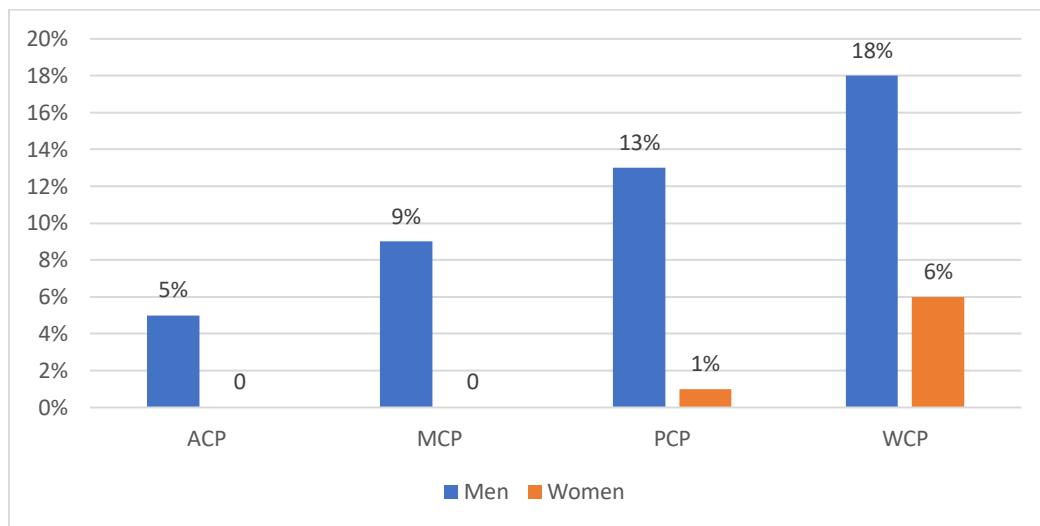
Graph 10.5 – Male respondents across prisoner categories who have attempted self-harm/ suicide while in prison



Similar to the data on depression, quantitative data on self-harm and suicide attempts is also reflective of the psychological stress an inmate undergoes during long and indefinite term imprisonment. Especially inmates who are held in detention for longer periods of times, such as PTA remandees were found to have attempted suicide.²⁷⁹

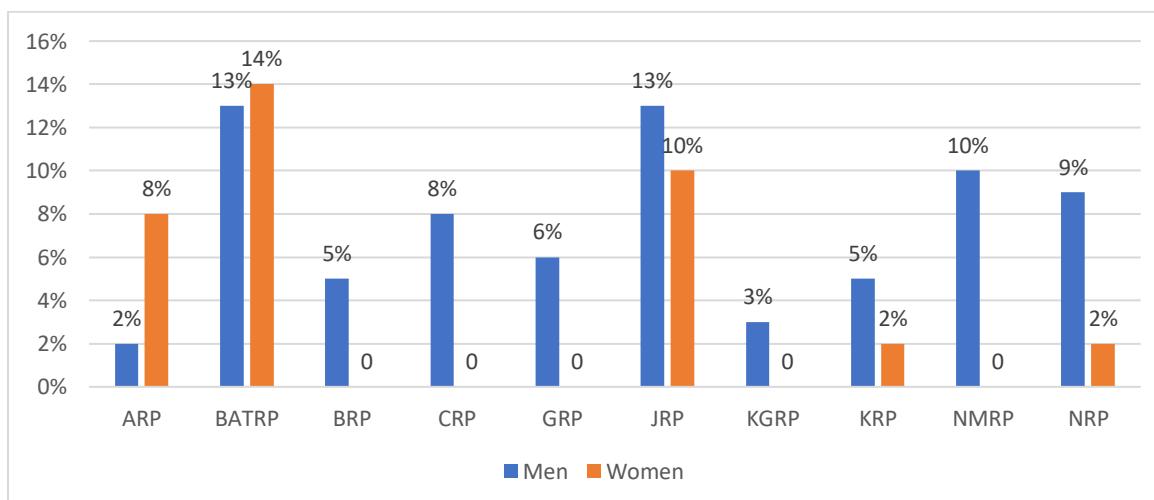
²⁷⁹ For a detailed discussion on the long-term detention of PTA inmates, please refer chapter Prisoners held under the Prevention of Terrorism Act.

Graph 10.6 – Male and female respondents across closed prisons who have attempted suicide



An inmate who had attempted to take his own life at ACP informed the Commission that he regularly harmed himself as a means of finding relief from the mental anguish he was experiencing. This prisoner was given the death penalty in 2002, which was later commuted to life imprisonment in 2016.²⁸⁰ Due to the problems highlighted above in ‘Accessing specialty clinics at GHs’, even after repeated requests by the doctor, this inmate was not taken to the GH for a psychiatric evaluation and due to the delay in transfer of his medical reports to the prison, he was not provided the treatment he required.

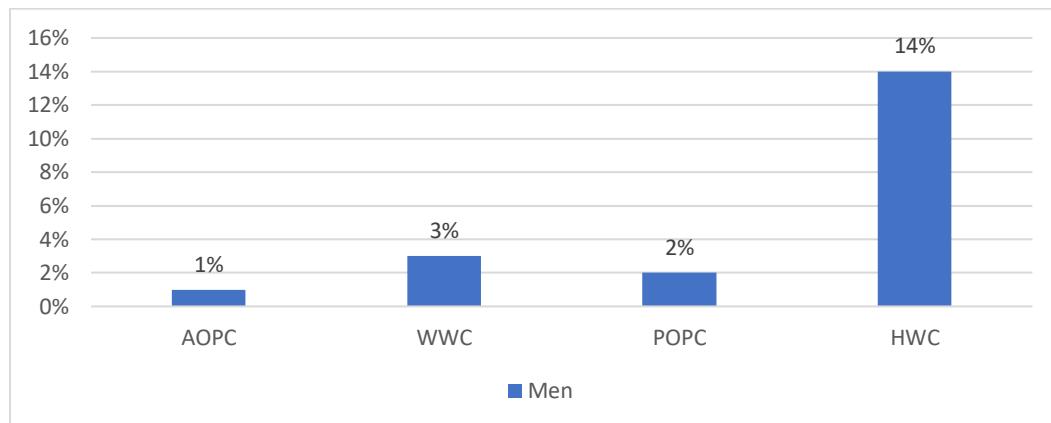
Graph 10.7 – Male and female respondents across remand prisons who have attempted suicide



²⁸⁰ For a detailed discussion of the mental health conditions of condemned prisoners, please refer chapter Prisoners on Death Row.

An inmate at KRP stated that he had tried to commit suicide by hanging multiple times because he was depressed. He described it in the following manner, "Then I tore my pants and made a rope out of it and hung myself. There was no point in living" and "I was in the B cell for several days. In there also I tried to hang myself". It was noted that the said inmate was not provided any treatment for his distress or being regularly monitored.²⁸¹

Graph 10.8 – Male respondents across open prison and work camps who have attempted suicide



In considering the higher rate of attempted suicide rates at HWC, it should be noted that half the respondents were from the YOs held at the Wataraka Training School.²⁸² The comparative lower rate of attempted suicide at open prisons and work camps maybe attributed to the lower rate of overcrowding in those prisons, which is associated with better conditions of imprisonment. Furthermore, inmates at open prisons or work camps have either been awarded a shorter sentence, typically of less than four years, or are serving the final portion of their sentence and due to be released soon.

Section 31 of the DSO states that jailors must pay more attention to those prisoners who have been identified as suicidal. It also mentions the protocol the jailor must follow when a prisoner is caught attempting to commit suicide. Section 221(2) of the SRs states that when the SP is made aware of any inmate who is affected with 'mental abnormality' or 'temperamental instability', he must report it to the CGP, who shall order the concerned inmate to be prohibited from associating with other prisoners in respect of location, labour and the normal routine of the prison. This practice was highlighted by the SP of NRP who stated, "In a case of attempted suicide, we isolate the prisoner in a cell without any clothes in order to prevent further attempts of suicide, and until the doctor confirms that the patient is no longer suicidal. There is no isolation cell in this prison and we lock the prisoner wherever there is a vacant cell". Such a practice though preventive, would result in the exacerbation of the concerned inmate's psychological/psychiatric condition and for this

²⁸¹ For a detailed discussion of the suicides in prison and lack of preventive mechanisms, please refer chapter Death in Prison.

²⁸² For a detailed discussion of the mental health issues prevalent amongst the YOs housed at HWC, please refer chapter Young Offenders.

reason, SMR 45 prohibits the use of solitary confinement on prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.

The prison system does not have procedures and mechanism to screen for suicidal inmates. There is also no monitoring of prisoners' distress levels and therefore there is little chance of preventing suicide risks. Prisoners who are identified to be suicidal and prisoners who are engaged in self-harm require a therapeutic response²⁸³, but in the prison system, the act of engaging in self-harm can be treated as a crime, as was seen in the case of YOs held in Wataraka.²⁸⁴

6.2. Treatment of psychiatric/psychological illnesses in prison

Of the nineteen prisons that were surveyed during the study only a few had designated treatment for mentally ill inmates. It was observed that the prisons in MCP, PCP, KRP, ACP and ARP have regular psychiatric clinics. Additionally, the WCP PH, which serves the three prisons in Colombo, has a forensic psychiatrist from NIMH who visits every Monday to treat psychiatric patients along with a team of doctors. There is also a designated ward for mentally ill prisoners where those who need constant attention are monitored. The MO at WCP stated that these prisoners are restricted, as they do not have enough space to move around because they are not allowed to leave their wards. MOs in KRP, PCP, ACP, ARP and GRP stated that there were regular (at least once every month) psychiatric clinic appointments, but when those with psychological or psychiatric disorders were asked if they were receiving treatment or help for the same, only a fraction of the prisoners answered in the affirmative.

Very few prisons, such as ARP, WCP, ACP, WWC, MCP and Wataraka Work Camp, had designated counselling officers. The Commission was informed by senior officers at the Prison Headquarters that the counselling officers currently employed by the DOP are former prison officers who underwent basic training in counselling. Some of the concerns raised by the counselling officers were the lack of infrastructure to provide private counselling sessions to inmates, and the need for additional training for the counselling officers to enable them to deal with prisoners. As stated by the counselling officer at WCP, "It would be better if we are provided with more training with regard to counselling".²⁸⁵ In the meantime, counselling officers have employed different tools to treat inmates. As described by the counselling officer in WWC:

"We conduct counselling sessions as individual and group sessions. We also go for rounds in the cultivation areas and conduct sessions there as well. We have scheduled their daily routine within a structure. They have confession

²⁸³ United Nations Office on Drugs and Crime, *Handbook on Prisoners with Special Needs* (Criminal Justice Handbook Series, 2009).

²⁸⁴ For a detailed discussion, please refer chapter Young Offenders.

²⁸⁵ For a detailed discussion of the lack of resources and training given to prison officers, please refer chapter Challenges Faced by the Prison Administration.

sessions in the evening where the inmates admit their mistakes and talk about the mistakes they made in life."

Counselling officers at ARP, MCP, ACP and the Wataraka Training School also mentioned the need for a designated psychiatrist who visits the prison every day, since most inmates require regular care. PCP and MCP are the only two prisons that had a psychiatrist who visited every day. Additionally, WCP PH also has two psychiatrists attached to the hospital, while a mental health clinic conducted by seven to eight doctors from NIMH is held at WCP every Monday. Upon inquiry, the then WCP CJ Mr. Prasad Premathilaka stated that inmates referred by the psychiatrist at WCP PH include those the prison officers identify as exhibiting signs of mental illnesses or appear unstable, and those to whom the court orders the prison to provide necessary psychiatrist treatment receive treatment at clinic. He further stated that since the clinic is held at WCP, it is convenient to the prison administration, because this allows condemned and other special category prisoners to be seen by a psychiatrist, without being escorted outside the prison.

It was noted the counsellors do not maintain records of prisoners who have been counselled. The Commission witnessed an incident at ARP, where the counsellors had informed the Commission of a particular inmate being mentally ill and therefore un-fit to answer the questionnaire. The counsellor however, did not have records to prove the same. Further, when the Commission checked his personal medical record at the PH, it was noted that he suffered depression and was on medication and hence lucid and competent to answer the questionnaire.

6.3. Factors that exacerbate the vulnerability of mentally ill prisoners

Mentally ill inmates might pose a threat to themselves and to others, and if they are housed within the prison system, they must be monitored closely. This places an additional burden, both on MOs as well as prison officers, particularly the latter who have no training to enable them to provide such care. This is illustrated by officers in different prisons:

"Mentally ill people have tried to attack people with stones and flower pots."
MO, GRP

"Once a mentally ill prisoner attempted to hit me with the baton of a guard. That is why I don't wear my tie since they can strangle me. Once a lady doctor was grabbed by the mentally ill monk."

Psychiatrist, PCP

"Officers are not trained to handle mentally ill patients. They may defecate on their clothes, hit others, not eat, not take a shower. [Then] an officer would have to go and handle the situation, but none of us are trained to do any of that."

Jailor, WCP

Mentally ill prisoners might also be vulnerable to violence and abuse by other inmates or officials. The above-mentioned prisoner in BATRP said that both the inmates and jail guards beat him at times, which was verified by the other inmates in the PH. Behavioural problems that are associated with their condition also place the mentally ill at greater risk of committing rule violations, which typically result in the imposition of harsh disciplinary sanctions. At Suneetha School, there was an eighteen-year-old boy who was diagnosed as bipolar and was in prison because of a complaint made by his grandmother, his sole caretaker, to the police. He was reportedly administered medication to keep him calm, throughout the day, because the prison officials had no other means to control him or the infrastructure to provide him with the treatment he needs.

A method used by prison authorities to manage inmates with mental illness is secluding them from other inmates, like in KRP, or housing all mentally ill prisoners together in a separate ward or cells, such as in JRP. The MOIC at WCP PH stated that aggressive psychiatric patients are either medicated to calm them or locked in a separate cell. By isolating these prisoners, the prejudice and stigma attached to them increases and makes these prisoners vulnerable to ridicule and ill treatment. This was observed in KRP, BRP, GRP and ARP. For example, an inmate in KRP said that when an inmate is placed in the 'mental ward' they are treated differently even if they receive medication regularly and do not exhibit any behaviour that is deemed contrary to generally expected/accepted behaviour.

It was observed by the Commission that solitary confinement was the default solution to deal with severely ill or violent prisoners with serious psychiatric disorders (ex. KRP PH Special Cells, putting them in a single cell alone in PCP B1 Ward). It should be noted that according to SMRs, solitary confinement is a disciplinary sanction, which should be implemented with extreme care and as sparsely as possible.²⁸⁶ Hence, it should not be used as a method of treatment for mental illnesses. This is reiterated by SMR 45, which states that the imposition of solitary confinement should be prohibited in the case of prisoners with mental disabilities when their conditions would be exacerbated by such measures, even as a disciplinary sanction. In such a situation, placing severely mentally ill prisoners in solitary confinement is unacceptable, particularly in instances where they usually would not be regularly checked by a qualified psychiatrist.

Progressive measures to improve mental health care in prisons could draw from the Mental Health Policy of Sri Lanka which states that one of the aims is to improve mental health care in prisons.²⁸⁷ Further, there exists a Draft Mental Health Act, which contains elements that specifically focus on the mental health of prisoners, such as Part VIII and IX of the Draft Mental Health Act. These sections provide for the treatment of mentally ill prisoners, stipulating that there must be at least two prisons in the country with designated mental health units to treat prisoners. Section 38 of the Draft Act focuses on directing persons with mental health problems and are being disruptive and a danger to themselves or to society

²⁸⁷ Mental Health Directorate, *The Mental Health Policy of Sri Lanka 2005 – 2015* (Ministry of Healthcare & Nutrition, 2005), s 2.11.

away from incarceration to treatment by giving the police the power to direct any mentally ill person who is found to be dangerous to himself or to the society to the closest medical facility. It further states, that the police must take custody of the concerned person only as the last resort and only when they have exhausted all options. The Draft Act also provides for Magistrates to direct mentally ill prisoners to be transferred to and treated at a hospital outside until their sentence ends or until the prisoner doesn't require further detention in a hospital. Additionally, where a mentally ill person is remanded, the Draft Act directs the prison authorities to apply to the Magistrate requiring the person to be admitted to a psychiatric unit to be screened for any mental illness and to follow the directions of the consultant psychiatrist.²⁸⁸

7. General observations

The health care system in prisons is severely inadequate, with the provision of care. The infrastructure is outdated and there is a shortage of medical resources, specifically medical personnel to handle the health care needs of the prisoners. The primary reason for many of the shortcomings of prison healthcare is the inherent structural deficiencies, whereby both the MOH and DOP are responsible for certain functions of the prison hospitals but there is no overall supervision, monitoring or accountability. This is particularly problematic in the case of MOs. Medical personnel were observed to be unaware of their duties and obligations stipulated under the PO, DSO and SRs. Allegations were received from all prisons surveyed, that many medical personnel were biased and discriminatory in their behaviour towards inmates - based on their offence and socio-economic status, which adversely impacts the psychological well-being of the prisoner. Prisoners have no means of complaining against MOs and SPs have no power to monitor the conduct of MOs.

It must also be pointed out that PHs are perhaps the sole medical institutions where in practice the decision of the doctor can be superseded by a non-medical professional, such as a SP, though by law this is prohibited. This is because due to a lack of officers and vehicles to transport prisoners, which the prison administration has to balance with its other functions, decisions to transfer prisoners are sometimes based on logistical efficiency rather than the direction of the MO.

Influential inmates were found to be permanent residents of PHs thereby receiving a higher degree of care. Special category prisoners, like those arrested under the PTA or condemned prisoners, were found to be especially disadvantaged due to the delay in transferring them to their regular clinic dates to GHs since a special escort is required to transfer special prisoners, which the under-resourced prisons struggle to provide. Prisoners at work camps were found to be further deprived of access to medical treatment because there is no regular monitoring of their health or workload.

Further there are no doctors during out of office hours and weekends, forcing sick inmates to suffer until the arrival of the doctor. The Commission also observed the lack of treatment

²⁸⁸ Draft Mental Health Act, 2007

and support offered to mentally ill prisoners. There is no screening or evaluation of mentally ill prisoners and persons with suicidal tendencies and no facilities to house them in prison.

Prison officers stated that they have no other option but to place persons with mental health illnesses in solitary confinement, as prisons are not equipped to provide care to persons suffering psychiatric disorders. This raises the need for severely mentally ill prisoners to be sent to mental health treatment facilities instead of prisons. When persons with psychiatric disorders are housed in prisons, they would not have access to the specialised medical care they require, and could become a burden to the prison administration and other inmates. They might also pose a threat to the wellbeing of the other inmates, if they were to become violent, as prison officers and prisoners are neither trained nor equipped to deal with violent mental health patients.

11. Contact with the Outside World

"It is hard for my wife to come and visit me here. She's going through a lot of hardships. Our child is also sick. She had to hospitalize our child and do everything alone. I love my child a lot, I want to see my child all the time. So, I tried to get her to come to prison to see me, but its difficult due to the distance and other factors".

Convicted, KRP

1. Introduction

Contact with family members is an integral component of the correctional process and frequent contact with family strengthens an offender's capacity to rehabilitate during imprisonment and reintegrate into society after release.

The SMRs identify contact with family as a right that should be respected, with SMR 3 stating that the very fact of denying a person the right of self-determination by depriving them of their liberty is by its nature afflictive. This international principle urges the prison system not to aggravate the suffering of prisoners under such circumstances. The prison administration thus bears the obligation of ensuring that prisoners' contact with family members is efficiently facilitated to avoid aggravating their suffering during imprisonment. Frequent contact with the outside world, through communication with their family members and keeping abreast of current news and information, will ensure prisoners are not completely disconnected from society.

2. Family visits

SMR 58 states that prisoners shall be allowed, under necessary supervision, to communicate with their families and friends at regular intervals through visits or by written correspondence or, where available, telecommunication, electronic, digital and other means.

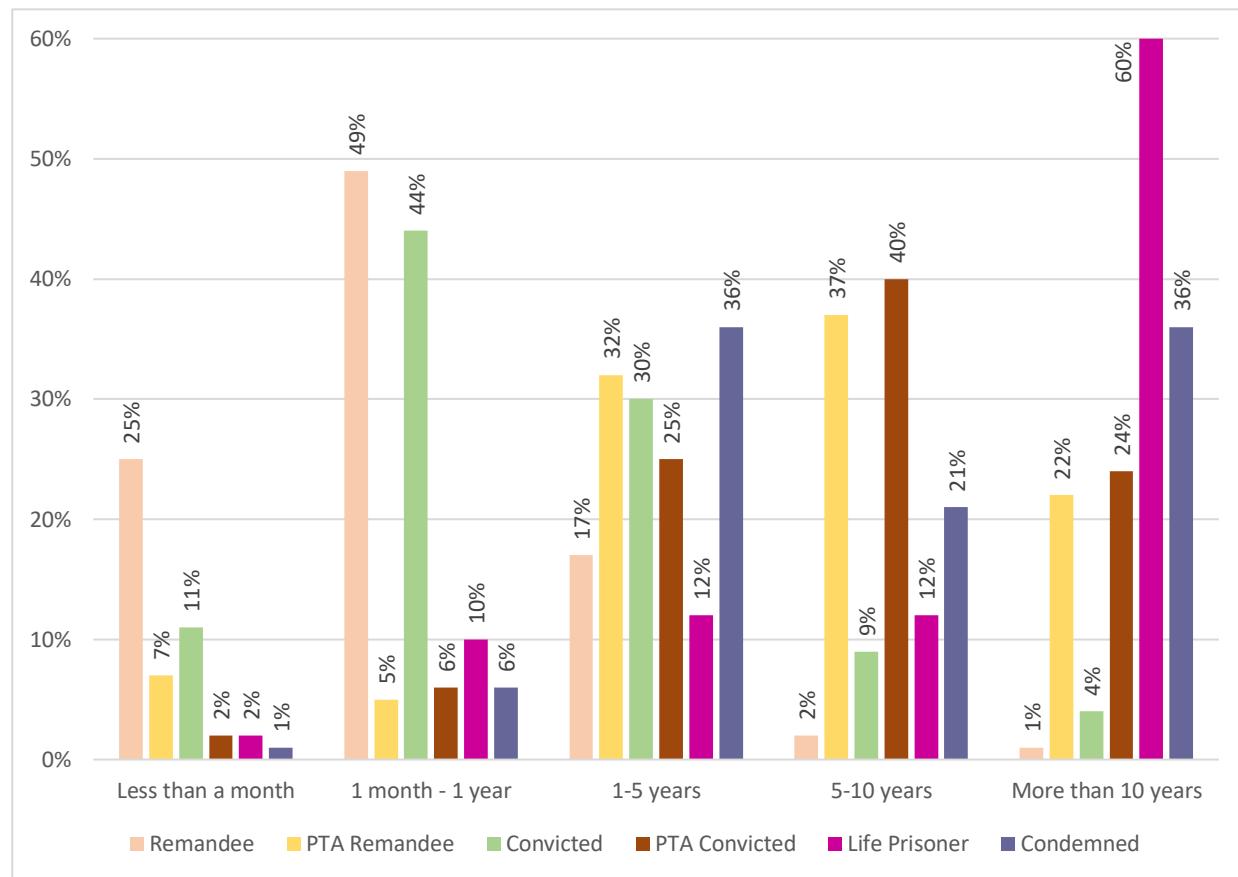
According to Section 71 of the PO, which is reaffirmed by Section 227 of the SRs²⁸⁹, 'every prisoner shall be allowed, in accordance with the rules in Section 94²⁹⁰, to receive visits from, and to communicate with their family and friends as well as a legal advisor, subject to such restrictions as may be imposed by the rules in order to maintain discipline and order in the prison and prevent crime'. This section is in line with SMR 3, which gives the utmost importance to an inmate's access to communication with their loved ones. As prisoners need

²⁸⁹ SRs, s 227 (2) "every prisoner committed to prison in default of paying a fine, or of giving security under Chapter VII of the Criminal Procedure Code, shall be allowed to communicate with his relations or friends to arrange for the payment of the fine or for furnishing security".

²⁹⁰ PO No.16 of 1877, s 94(1), "The Minister may from time to time make all such rules, not inconsistent with the Ordinance or any other written law relating to prisons, as may be necessary for the administration of the prisons in Sri Lanka and for carrying out or giving effect to the provisions and principles of this Ordinance".

to communicate with their lawyers regarding their cases, this section in the PO permits lawyers or representatives to meet prisoners and does not restrict contact to only interaction when at courts. This adheres to SMR 61 which states that all prisoners shall be provided with adequate opportunity to confidentially consult with a legal advisor without any delay.

Graph 11.1 – Time spent in prison by male respondents across prisoner categories²⁹¹



Graph 11.1 illustrates that 36% of condemned prisoners, 60% of life prisoners, 24% of PTA convicted prisoners and 22% of PTA remandee prisoners have spent more than ten years in prison. This demonstrates the importance of facilitating regular family contact for prisoners to enable them to maintain personal relationships as well as their emotional well-being.

²⁹¹ Note – the question asked what is the length of time spent in this prison. Thus, this is an indication of the time the respondent spent on the particular prison where he filled the questionnaire.

2.1. The procedure to receive visits

The law clearly outlines that remandees are allowed one visit a day²⁹², convicted and life prisoners are permitted one visit every month²⁹³, and condemned prisoners and persons on appeal are entitled to one visit per week²⁹⁴. No category of prisoners is permitted to receive visits on Sundays. Section 227 (1) of the SRs also states that every new entrant to the prison shall be afforded reasonable facilities to receive visits from, or to communicate with any relations or family for the purpose of preferring an appeal or providing bail.²⁹⁵

SMR 60 explains that search and entry procedures for visitors shall not be degrading and body cavity searches should be avoided at all costs. It also mentions that a visitor's consent should be obtained when undertaking a search, and if the individual chooses to withdraw consent, the prison administration may refuse access, which is in accordance with a Jailor's powers as stated in the PO below.

The PO sets out the parameters and powers of the jailors to allow admission to visitors who wish to visit prisoners. As per Section 72(2) of the PO²⁹⁶, the jailor has to record the names of the visitors in a Visitor book. Section 72(1)(b) states that the jailor has the ability to search a visitor based on suspicion and, if needed, deny the individual entry to the prison for the visit but the manner in which searches are to be conducted is not specified in the Ordinance. The Jailor would then escort three visitors to visit prisoners during a single visit and the prisoner would be allowed to speak to his/her visitors for fifteen minutes.²⁹⁷

In special circumstances, the SP has the authority to either increase the number of visits or the number of visitors a prisoner receives, or increase the duration of a visit.²⁹⁸ Section

²⁹² SRs 1956, s 200 (1), "Subject as hereinafter provided, every unconvicted prisoner or civil prisoner shall be entitled, if the necessary arrangements can be made in the prison, to receive, once a day, a visit, lasting not more than fifteen minutes, from a party of his relatives or friends not exceeding three in number"

²⁹³ ibid s 228, "Every convicted prisoner shall, during the term of his imprisonment, be permitted to receive visitors once every month, and to send one letter every month, and to receive such number of letters (not less than one in each month) as the Superintendent may consider reasonable: Provided, however, that if any prisoner is guilty of misconduct, the Superintendent may prohibit prisoner either for the duration of his imprisonment, or for such specified period as the Superintendent may think fit, from sending or receiving letters, or from receiving Visitors.

²⁹⁴ Circular No. 33/2001

²⁹⁵ SRs 1956, s 227 (1), "Every newly convicted prisoner shall, during the period provided for preferring an appeal against his conviction, be afforded reasonable facilities for receiving visits from, or communicating with, any of his relations or friends for purposes connected with preferring an appeal or providing bail. He shall be allowed to receive visits, or communicate with his relations or friends as often as the Superintendent considers it necessary to enable him to arrange for the management of his property or other family affairs".

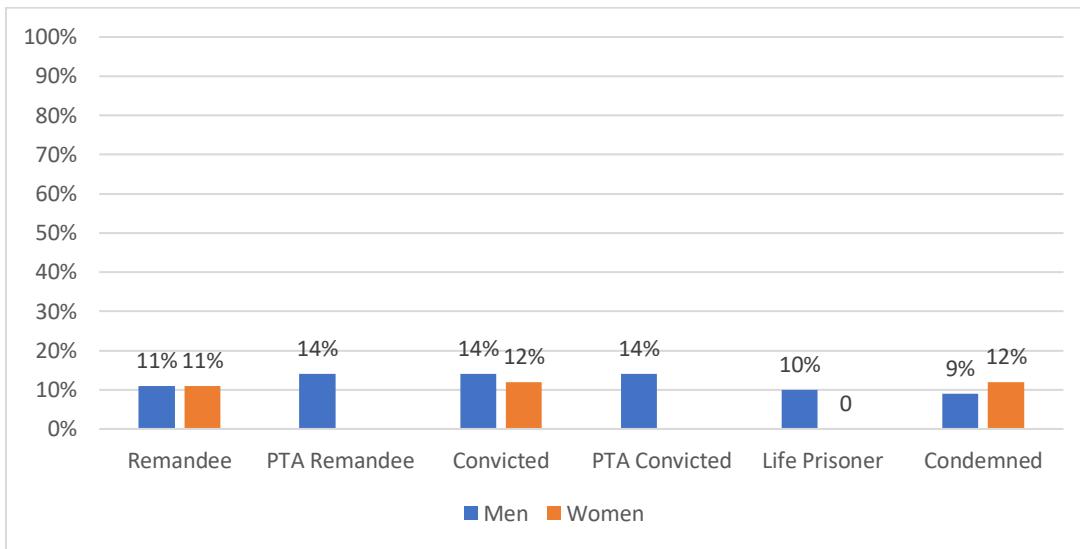
²⁹⁶ PO No.16 of 1877, s 72(2).

²⁹⁷ SRs 1956, s 200 (1)

²⁹⁸ SRs 1956, s 200 (1), "... Provided, however, that, in the special circumstances of any case, the Superintendent may—(a) increase the number of visits which any such prisoner is entitled to receive under the preceding provisions of this rule; (b) permit any such prisoner to be visited by a party of more than three of his relatives or friends; and (c) extend the duration of any visit to more than fifteen minutes."

230(4) of the SRs²⁹⁹ mentions that prisoners shall be allowed to receive visitors in a special room that has been set apart for this purpose near the main entrance of the prison, with a jailor or officer present within hearing of every such interaction as stated in Section 230(5) of the SRs³⁰⁰. The SRs don't explicitly set the conditions which should be maintained at the facilities used for prisoners to meet visitors. It is also mentioned in Section 230(4)(c) of the SRs³⁰¹ that condemned prisoners are allowed to have visitors in their cells, but the Commission did not observe this being the practice.

Graph 11.2 – Male and female respondents across prisoner category who stated they were prevented from seeing their families during visits.



Across prisons, a minority of male respondents in each prison in the study sample stated they were prevented from seeing their family when they visited prison, while female respondents in KRP, WCP, GRP, ACP, NRP, PCP and ARP said the same. In the study, of the total sample, 12% of men and 12% of women stated they were prevented from seeing their family when they had visited. It must be noted that the qualitative data revealed that many respondents did not make the distinction between the prison authorities actively preventing the inmates from seeing their family members during visits, as opposed to inmates being unable to see their family members when they visited due to other reasons, such as

²⁹⁹ ibid s 230(4), "Prisoners shall be allowed to receive visitors in a special room set apart for the purpose in the prison. Such room shall, as far as possible, be near the main entrance: Provided, however, that - (a) in the case of a female prisoner, such prisoner shall, as far as possible be allowed to receive visitors in the enclosure provided for female prisoners and in the presence of a female prison officer; (b) if a prisoner is seriously ill, the Superintendent may permit such prisoner to receive visitors in the hospital; (c) in the case of a condemned prisoner, such prisoner shall ordinarily be allowed to receive visitors in his cell; and (d) the Superintendent may, for special reasons be recorded in writing, permit prisoners to receive visitors in any other place within the prison."

³⁰⁰ ibid s 230(5), "A Jailer or other officer shall be present whenever a prisoner receives visitors. Every such interview shall, subject to the provisions of rule 201 (2), be within the hearing of the Jailer or other officer."

³⁰¹ ibid s 230(4)(c), "In the case of a condemned prisoner, such prisoner shall ordinarily be allowed to receive visitors in his cell."

inadequate time to allow all visitors inside within the stipulated visit period due to the large number of visitors. The sections below will discuss the patterns found in the different kind of prisons.

2.2. Visit rooms for male prisoners in closed and remand prisons

As identified during inspections, the ‘visit room’ usually refers to a small room where prisoners and visitors are separated by a half cement wall/barrier with the upper part of the barrier constructed of glass covered in mesh, or a separation made of layers of mesh. These rooms were usually found to be lacking adequate natural or artificial light, with only one or two tube lights and no windows for ventilation purposes, and there were rarely partitions or cubicles to enable persons to have private conversations.

The exception to this is the MCP visit room for convicted prisoners, which allows prisoners and visitors to be seated in the same room on either side of a desk facing each other (see photo 11.3).

As per the procedure outlined in Section 562 of the DSO³⁰², a jailor would bring prisoners to the visit room to meet his/her visitors, but an average of ten to fifteen prisoners and their visitors are brought in at a time, thereby causing the room to become congested. It was noted that all visitors, including pregnant women, women with new born children and elderly visitors, are required to stand during the allotted period of time, as all visit rooms, except the visit room for convicted prisoners at MCP, do not contain chairs.

During inspections it became evident that due to the mesh and glass in most prison visit rooms, prisoners have to shout loudly in order to have conversations. It was noted that prisoners and visitors alike found it difficult to hear each other due to the level of noise in the visit room, which drowned out individual conversations and created a collective indistinct clamour. Thus, families would not be able to hear their visitors, thereby resulting in the purpose of the family visit being lost. This was further confirmed during inspections at many prisons, where it was noted that visitors were also unable to clearly view inmates' faces and vice versa as the opaque layers of mesh diminished visibility. YOs at HWC mentioned that they were not given the space to speak to their relatives without reserve as there would be a guard standing right next to the inmate, listening to every word spoken. This was also mentioned by prisoners at GRP who bemoaned the fact it's hard to speak with, or share their woes with visitors because the guards would be within earshot. Hence, prisoners feared reprisals, as they believed that expressing their feelings to visitors regarding the realities of prison would lead to adverse repercussions.

³⁰² DSO 1956, s 562, “When a prisoner’s friend or friends come to the prison to see a prisoner, the gate keeper will at once take from them their petition or if there is no petition, the name and all particulars of the prisoner they wish to see. If they come before the time fixed by the Superintendent, they will be sent off the premises and told to come again at the prescribed time, when they will be allowed a visit or receive such other answer to their application as may be necessary, but they are on no account to be permitted to loiter in the vicinity of the prison either before or after the visit”.

The manner in which the visits are conducted is in breach of national law and SMR 61 as the facilities in prisons prevent prisoners from being able to communicate with their visitors in a manner conducive to maintaining family relationships. It must also be realized that remand prisoners are quite dependent on their family members to make the necessary arrangements for their court hearings, such as collecting documents, and to discuss their case, and therefore it is imperative that prisoners are allowed the space to communicate where they do not have to shout confidential details. Prisoners described the difficulties they faced in this regard thus:

“Go and have a look will you madam. Yesterday, if the two of you madams had been on either side of the mesh and talked, you could have realized the situation here exactly- whether we can hear the other side or not. You will not hear at all, because you talk softly, no. It cannot be heard even if we shout loudly. Can my small children talk like that? Can’t, no miss? They go back crying.”

Convicted, GRP

“They should make proper arrangements for us to talk with our visitors clearly. We have to talk with the visitors about our case, but they can’t hear us clearly because of the glass. They stand on the other side and show hand signals and we stand on this side and we don’t understand them. The people who stand there on the other side can’t understand us, so they don’t know what to do. Five or six months ago, I asked them to get my case records, but it didn’t happen because they couldn’t hear us clearly”.

Convicted (on appeal), BATRP

Section 230(7) of the SRs³⁰³ allows prisoners to be able to speak to their visitors for up to thirty minutes, but this law is not necessarily followed in every prison. An inmate in BATRP stated that he was allowed to talk to his visitors for only two to three minutes, which officers explained was to accommodate every visit when the number of visitors is high on a particular day. Some inmates stated their families were only given visitations of only ten minutes, despite travelling great distances to visit them. For this reason, many prisoners have told their families to stop visiting them in prison.

The more recently built prisons have taken into consideration the importance of conducting visits in a humane manner, and have attempted to create a well-structured facility for family visits. In PCP, the Commission observed the visit room had a long corridor with a glass screen on one side, which was enclosed and was partitioned into booths. Each booth had a phone on either side of the glass screen with a bench for prisoners and inmates to sit and

³⁰³ SRs 1956, s 230 (7), “No prisoner shall, unless the Superintendent otherwise directs, be allowed to speak to the visitor or visitors for more than thirty minutes and not more than three persons shall be permitted to visit a prisoner at a time.”

communicate via the phones. While this attempt by the DOP is commendable, it was unfortunately noted by the Commission that the prisoners did not use the available phones, as the phones in the booths were not working and have not been functional since late 2017. Instead, they were observed standing on top of the cement counters where the phones were placed so they could speak over the top of the glass through a small opening, which was covered in mesh. The officer present at the time insisted it was not necessary to repair the phones, because according to him the prisoners preferred talking through the mesh. In interviews, it was noted that the prisoners in PCP stated the talk time on the phones was limited to fifteen-minutes and their conversations were recorded. The prisoners stated that the phones were non-functional not due to misuse but were out of order and the failure to repair it required prisoners to communicate through the mesh at the top of the glass screens. It was observed that the visit room near the female ward at PCP was vacant and the officers confirmed that the phones in that section were out of order as well. During the Commission's inspection, a pregnant woman was observed climbing on the platform to speak with the prisoner she was visiting.

During the follow up meeting the Commission had with the SP of PCP, when the issue of the non-functioning phones was raised the SP stated the service was disconnected due to unpaid bills. The SP agreed this was a violation of prisoners' rights and needed to be resolved immediately due to the immense discomfort caused to both the prisoners and visitors, especially the elderly and disabled, who are forced to climb on the platform and shout above the glass barrier. In a subsequent meeting with the MOJ, the Commission was informed that the MOJ focal point for prisons was not aware that the phones in the PCP visit room had not been functioning for twelve months, indicating the lack of adequate oversight of the DOP by MOJ.

The prison at ACP is a newly built facility which opened in 2017 has constructed visit rooms that are more conducive to prisoners communicating with ease with their visitors. At ACP each male ward has its own visit room with eight phone booths divided by a glass partition. Visitors would be brought inside from a separate visitor's entrance that leads to a corridor and is separated from the prisoners. This corridor has entrances to the visit room of each ward and hence visitors can enter the respective visit room attached to the ward, which houses the prisoner they're visiting. Once inside the visit rooms, the visitors and inmates can interact on the phone for fifteen minutes. Although there weren't any benches for inmates or visitors to sit, the prisoners did not need to shout to be heard, thus enabling easy, non-disruptive contact between prisoners and their visitors.

At the WCP PH, inmates were allowed to sit across their visitors near the garden at the entrance of the PH, while the prisoners and visitors were seated on a bench. This allows inmates to have a more natural interaction with their families in a relaxed and pleasant environment. The Commission also observed that prisoners were allowed physical contact with their children for brief periods of time during the visit. The expressions and mood of prisoners and visitors at the WCP PH during the visit were in stark contrast to that of prisoners in remand prisons' visit rooms.

2.3. Visit rooms for female prisoners in closed and remand prisons

Visit rooms in female sections were created by designating certain spaces or rooms to be used for this purpose. In GRP, the women inhabited a house-like building, which contained three rooms, which were used as wards. Therefore, family visits were conducted in the common area inside the building, in the vicinity of the entire female section. When visitors arrive, prisoners bring out a table and the jailor and guards sit at the opposite ends of the table, while the prisoner and the visitor stand on either side of the table and communicate in the presence of everyone. There is no privacy since everyone, including the other inmates, are able to hear the conversation. The women stated that it was difficult to express their sentiments freely and they would like more privacy to communicate with visitors.

In NRP, the visit room was similar to most visit rooms in the male closed and remand prisons. There was no glass screen but a mesh separation. Unlike the male section, due to the lesser number of female inmates, fewer women receive visits at a time, and hence there is more space to communicate freely and they need not shout to be heard. However, it was brought to the attention of the Commission that the women would experience several delays in receiving visitors. As a remandee stated:

“We are utterly helpless here. The only relief we have is we are visited by family. Although we are visited by family, the visit time is recorded as 0900h but we are only shown to them at 1100h and the families suffer a lot waiting outside. Therefore, we don’t have much time to talk. If the visit is recorded as 1500h, we are shown at 1600h. Again, we don’t have enough time to talk.”

During a follow up meeting with the SP of NRP at the time, the SP explained that this was a procedural delay due to the lack of officers and undertook to improve the procedure. Being the most recently built prison, the female visit rooms in ACP are similar to the male visit rooms. They have seven phone booths containing functional phones, allowing the inmates to see their visitors clearly and to communicate easily, with more privacy.

The Commission noted at GRP that the CJ allowed a remandee to hug her children during the visit. Such interactions the staff said were done to preserve the overall mental well-being of female inmates, since the single biggest grievance of many women prisoners is separation from their children during incarceration.

2.4. Work camps and open prison camps

These prisons are structured to allow its inhabitants, who are convicted persons, more freedom than closed prisons, as these are convicted prisoners who will complete their sentences shortly – which is the reason they are usually transferred to such camps. The visit rooms in such open prison and work camps are created in small open spaces, often in a makeshift hut, permitting prisoners to freely engage in conversation with their families without any physical barriers. The guards are within eyeshot but allow families to interact with the inmates. replicating an outside world environment. However, some inmates said

they didn't receive many family visits as the work camps are situated far from their hometowns and hence visitors are required to travel long distances.

2.5. Open visits and family meetings

Most convicted prisoners receive only one visit per month, during which they are not often allowed to accept home cooked food or too many provisions from their families, especially in large closed prisons such as WCP. Open visits are therefore designed to specifically benefit convicted prisoners. Open visits are not explicitly mentioned in the PO but it is implied in Section 222 (6)(a)(ii) of the SRs³⁰⁴, which allows prisoners to receive food on the day of religious festivals (such as Christmas, Hindu New Year or Vesak) from any friend, well-wisher or relative. Prisoners are therefore allowed to receive home cooked food and a larger quantity of basic provisions on special occasions. This is also confirmed in Circular No. 2012/14 on providing an opportunity to meet visitors without limitation during the Sinhala and Hindu New Year.³⁰⁵

The Commission also observed prisons conducting 'family meet ups' to commemorate Prisoners' Day which falls on September 12. On specified days during this month, families and friends of condemned, life and other long-term prisoners are allowed to come inside the prison and interact with them face to face. They are also allowed to bring parcels of food and share meals with their families. The Commission witnessed one such meet up during a visit to WCP and was able to witness the joy on the face of long term and condemned inmates who were able to spend quality time with their families as well as receive food items and provisions.

While certain prisons allow visitors to share a meal with inmates during the visit, they are not allowed to receive items or accept food, as is the rule, but many prisons allow prisoners, especially condemned and life prisoners, to accept provisions and food items, despite the additional burden of searching through a large number of food parcels for contraband. The Commission was also made aware of a similar event organized at NMRP for PTA inmates (both remandees and convicted) to commemorate Prisoner Welfare Day 2018. The SP of NMRP at the time Mr. Jayaweera de Silva informed the Commission that even though such family meetings are not held for remandees, but only for long term convicted and condemned prisoners, for humane reasons they had decided to give such an opportunity to PTA inmates, some of whom have been in remand for more than ten years.

During the study, the Commission met with prisoners who stated that they did not receive visits at their location prison since their hometowns were at a considerable distance. If a prisoner has not received a visit in six months, the prison administration will temporarily

³⁰⁴ SRs 1956, s 222 6 (a)(ii), "be permitted, on the day of such festival, to receive gifts of food or drink from any friend, well-wisher or relative."

³⁰⁵ Department of Prisons, Circular No 2012/14, "By providing an opportunity to meet visitors without a limitation to prisoner imprisoned and suspects in Sinhala and Hindu New Year, a great number of people gathered in and around prison institutions on those days."

transfer him or her to a prison close to their respective hometowns to meet their family members, where they are entitled to a visit every day for seven to fourteen days. This system too might not always allow the prisoner to see family because the prisoner will not qualify for this option if s/he receives a visit from a local contact or someone who has brought provisions sent by their family. Persons therefore requested a transfer to prisons closer to their homes.

Prisoners have suggested that as far as possible, they should be housed in prisons close to their respective regions, particularly given that many families experience serious financial difficulties generally, and hence are unable to visit family members in prison. The incarceration of persons in prisons far away from their homes contravenes SMR 59, which states that a prisoner shall be held to the extent possible, in a prison close to their homes, which guarantees easy communication with family. One of the reasons this cannot be done is because the type of prison within a geographical region cannot house all types of prisoners. For example, JRP is a remand prison and it does not house many convicted prisoners nor special category prisoners. A convicted female prisoner who was transferred to ACP from WCP said that she was unable to meet her family as they were in Colombo and would have to travel a great distance to reach ACP. Therefore, she hadn't received a visit since she was transferred to ACP, eight months prior to the Commission's visit. This reaffirms the necessity of the integration of SMR 59 into the local framework to ensure families are able to maintain contact with prisoners.

3. Food parcels and articles from visitors

SMR 114 confirms that untried prisoners can have food procured from outside through family or friends and this is affirmed by Section 222 (6)(b) of the SRs³⁰⁶, subject to conditions, such as time of delivery, inspection and the nature and quantity of the aforementioned articles as decided by the CGP. In most remand prisons, remandees are allowed to receive food from home, while the convicted, condemned and life prisoners are not granted this privilege.

The Commission observed parcels of food that had been brought by visitors being inspected by officers in the visit room. Visitors often bring packets of biscuits, carbonated drinks, rice packets or home cooked food for the inmates. Officers then inspect the food with a spoon, using it to sift through the food. This spoon is kept in a holder made out of a plastic bottle cut in half and was filled with murky and discoloured water. Officers were observed using the same spoon to inspect every parcel that was brought into the visit room, irrespective of the religious practices of the inmates which might prohibit the consumption of certain food. Packets of biscuits were ripped open and transferred into brown paper bags, to ensure there is no contraband entering the prison through packaged food. . Officers at multiple prisons

³⁰⁶ SRs 1956, s 222 6(b), "Gifts of food or drink to prisoners shall be permitted to be brought into the prison subject to such conditions as to time of delivery, inspection, and the nature and quantity of the articles as may be laid down by the Commissioner."

informed the Commission that they had these measures in place as there have been instances of drugs being smuggled into prison through the food. Interviews with prison staff confirmed the smuggling of drugs through bones in chicken, drinks and mixed into the curries of home cooked meals as well. As a precaution, a thorough search is conducted of every food parcel and item brought for prisoners.

Inmates complained, and this was also observed by the Commission, that the transfer of food from its packaging to a brown paper bag caused contamination and ruin, especially where the food items are not dry, and caused food items, such as biscuits, to fragment and become stale. With regards to home cooked meals, prisoners were disgruntled at the disorderly inspection and mixing of food using a spoon as the resulting mess caused the meal to become unappetizing. They would ask the guards not to mix the food, but their complaints are not taken into consideration because prison guards are duty bound to conduct inspections of all food parcels entering prison. However, it was noted that items from the canteen were not checked at certain prisons. At ACP, a different system is in place, whereby family members of prisoners could purchase items from the prison's store and give the inmates the receipt of their purchase, so they could claim it from the stores themselves. The items are then internally packaged and handed to the respective prisoner.

Inmates in other prisons have suggested that a similar system be instituted in all prisons to enable inmates to buy their food and personal supplies. This could be operated via an account/card system, which allows families to top up the card and the inmates would be able to swipe it in the canteen to buy their supplies. Such measures remove the need to inspect and potentially spoil food, since the risk of smuggling contraband into prison is minimized as the prison would have pre-checked items sold or produced by the prison canteen. However, this option would limit inmates' choices to the food items available at the canteen. The Commission received complaints that pointed to the possible problems with such a system, such as expired items being sold at the canteen or the prices in the canteen being higher than market prices. Prisoners stated their families would bring cooked food with items grown in their own gardens or other items they produced at home, and hence it was cheaper for the families rather than purchasing from the canteen.

3.1. Other articles from home

Along with food, families of remandees also bring other necessities, such as toiletries, including sanitary napkins³⁰⁷, and clothes, which are not provided to remandees by the prison administration. Inmates stated that these articles would be inspected in haste and sometimes items, such as soap, would be broken into pieces for inspection, as the prison guards were concerned that contraband may be smuggled into prison in this manner. Checking items in a way that destroys the provisions would cause difficulty to convicted prisoners, as they are able to obtain the items they need only when they receive visits once a month.

³⁰⁷ For a detailed discussion on the challenges faced by women in accessing feminine hygiene products, please refer chapter Women.

Prison authorities stated that checking provisions proved to be a challenge as they have to ensure every package or item is free from any form of contraband. Although prisons such as PCP and ACP contain electronic scanners for scanning parcels, it was noted that since these scanners were placed close to the entrance of the prisons, which was a considerable distance from the visit rooms, the food and articles were rechecked when they reach the visit rooms by using the methods stated above to ensure no contraband was included in the goods in the space between the scanner and the visit room. This defeats the purpose of the scanner and does not resolve the problems mentioned by the prisoners. At the time of the Commission's visit, the parcel scanners at ACP were not in use and the Commission did not observe any parcels or items being scanned.

4. Visitors

4.1. Treatment of visitors

During interviews, prisoners informed the Commission that they would tell their visitors not to visit them due to the verbal abuse or rude treatment to which they are subjected. A female foreign national inmate from NRP stated about the only visit she had received:

"They harass the visitors so much that they don't come a second time. When the madam used to sit in the visit room, one of the ladies who was released from here wanted to come and visit me... it was my birthday. She was released on the same day so she said, "If I get released today, I'll come to meet you in the evening." She was released and, in the evening, she came to visit me. This madam, she scolded her so much. Madam scolded her so much, she started crying. I felt really bad, I said to her "I had told you not to come today, birthday is no big deal." She was from Puttalam, a Tamil Muslim. I used to think of her as a mother, I used to take care of her a lot. She still keeps in touch, she sends me messages through people, but she doesn't come here anymore".

It was stated that female visitors of inmates would be subjected to verbal insults or abuse, and the guards would also make remarks that made women feel uncomfortable. Sexual harassment, use of obscene language or derogatory remarks, including sexual advances in return for better treatment towards the inmate they were visiting in prison, directed at female visitors reportedly prevented females from visiting their family members in prison. An inmate from JRP described it thus:

"When pretty girls come to visit, the officers behave so badly. They tease them and make fun of them. These are all unwanted activities. The officers will also go on to ask, what case we are in for, why we did it. Why do they have to ask them these questions? It's none of their business. Our families are in such sad conditions, they don't have to answer these questions. My wife doesn't have anyone. I am the only one looking after her. If she is treated like that when she comes to visit me, how will she feel? All that has to be stopped."

Prisoners said they faced verbal abuse by guards who would make derogatory comments about the family members of prisoners, which adversely impacts the emotional state of the prisoner. Male prisoners at GRP mentioned that they would hear prison guards insulting their families and felt helpless as they were unable to stand up for their family members. This in turn deprives prisoners from contact with their families, as they would ask their family members not to visit them in prison to avoid being subjected to derogatory treatment. The conduct of prison officers would therefore directly result in diminishing the ability of prisoners to maintain strong relationships with their families during their imprisonment.

4.2. Delays and time constraints

As mentioned above, the limited time prisoners are allowed to spend with visitors in prison is a grievance that was often expressed, with prisoners stating that fifteen minutes was inadequate to meet visitors who have travelled long distances. This is particularly so in the case of convicted prisoners who are allowed to have visitors only once a month. Prisoners have requested that more time be allocated to them during visits to talk to their family, and that prisons should give priority to those whose families have come from afar to visit. Prisoners expressed their feelings thus:

“To visit me it will take them an entire day. They have to travel from Jaffna and stay in Kandy the previous night. It isn’t worth the visit, as they only get five minutes to speak to me and we can’t speak or hear clearly due to the double nets they have put in-between and the noise made by the other inmates who are shouting around us. So instead of coming for visits they could just be at home.”

Condemned, PCP

“I get visits from Colombo only once a month but they still only give around a minute to talk. They treat us like animals during the visit. There are prisoners and normal people there but they treat everyone like convicts. My family comes all the way from Colombo, but they do not care about that. It takes eight hours for them to come to Jaffna from Colombo by bus. There’s no point spending eight hours on the road to talk for one minute only.”

Remandee, JRP

However, the Commission acknowledges that prisons are grappling a series of structural challenges, including and especially a severe shortage of staff, due to which it is difficult to efficiently implement even the daily visits allowed to remand prisoners. As a result, to improve the process of receiving visits, the cadre of prison officers for each prison should be increased and the number of prison officers recruited should reflect the increase in population of prisoners over the last few years. Without a proportional increase in the

number of officers, the prison administration will not be able to efficiently facilitate the entitlements of prisoners.³⁰⁸

5. Attending funerals and visiting the sick

The Commission was informed that inmates are allowed to attend the funeral of close relatives who passed away while the prisoner was serving their sentence in prison, where they are allowed to spend a maximum of thirty minutes. Circular 11/2016 confirms this and indicates that prisoners are allowed to even visit the sick bed of close relatives who are in a critical health condition, but highlights that visiting sick relatives is a privilege and is done on an 'extreme humanitarian basis', due to the logistic barriers and challenges associated with it.

The Circular also states that a prisoner who is allowed to visit a sick relative must be informed that if the relative dies within six months of the visit, the prisoner will not be allowed to attend the funeral of the relative. While the Commission commends the efforts taken by prisons to facilitate visits despite logistical challenges, it must be realized that prisoners suffer tremendous communication barriers while serving their sentence, particularly due to the lack of telephone services. As a result, many prisoners, particularly long-term prisoners, suffer estrangement from their family members and loss of kinship and breakdown of relationships. Therefore, in this context, being able to attend the funeral of relatives would significantly impact prisoners' mental and emotional well-being. Hence, the opportunity should not be routinely denied, but should be decided on a case-by-case basis.

6. Letters

"They don't give the letters we write. They don't give anything. That day after court granted me bail, I couldn't even write a letter home saying that bail had been granted by the courts. I sent a letter about two weeks ago. When I asked them when they came to visit me, day before yesterday, they said they hadn't received it. I have to ask again. I sent a letter to my village calling for sureties so as to post bail.

Q: Are you allowed to take a telephone call in an emergency?

A: No, nothing like that. Nothing like that. Can't take any calls. When last week I had to go to court, my family didn't know. I was taken suddenly. I asked if I could take a call. I wasn't given. No one came from home. They didn't even know that I had to go to court. When I go there, I fall into trouble since there is no lawyer to talk for me."

Remandee, KRP

³⁰⁸ For a detailed discussion on the impact of staff shortages on the conditions of prisoners, please refer chapter Challenges Faced by the Prison Administration.

In the majority of prisons, the only form of communication other than visits is through letters.

Section 233 of the SRs states that every prisoner should be provided with the necessary stationery to write letters and the SP shall set aside a particular day of the week (preferably Sunday) for prisoners to write³⁰⁹, and letters are required to be dispatched within forty-eight hours after they are written³¹⁰. Section 591 of the DSO³¹¹ mentions a prisoner may write or receive a letter once a calendar month. To write a letter, the SM office has letter formats printed on small pieces of paper, which according to Section 592 of the DSO³¹² have to be initialled by the jailor. The officers then allow prisoners to write on the template before they read through the content and post them on behalf of the prisoners. Section 234 of the SRs allows a prisoner to retain in his possession, with the permission of the SP, a letter received.

Although the legal framework sets out an efficient system for inmates to easily send letters, in reality this is not the case. Firstly, prisoners pointed out the problems that arise due to using the letter template with the prison stamp, as described by an inmate thus:

“They give a paper to us. We write a few words on it and give it to the officer. I think that they sent it with their seal and without a stamp. After seeing this letter, anyone will know that it is being sent from prison. I do not think that our family should be responsible for what we did. They should not suffer because of us. However, after seeing this letter, everyone at the post office will know that this letter came from prison. They do not even put it in an envelope; they just type it on a paper and send. It would be really good if there is a better procedure for this. (Send it through stamped envelope) They fold the letter and staple it. Anyone can see what we have written on it. If it happens in a proper way, it would be really good sir. It affects our mentality”.

Many inmates expressed they faced numerous challenges sending letters through the prison administration, such as the delays in posting them. Prisoners claimed that letters take months to reach their homes, even if their villages are close to the prison. A prisoner from

³⁰⁹ SRs 1956, s 233 (1)(2), “Every letter, which a prisoner is entitled under these rules or is permitted by the Superintendent to send, shall be written at such time or place as the Superintendent may specify, and such stationery as the Superintendent considers necessary for the purpose shall be supplied to the prisoner.”; “The Superintendent shall set apart a particular day of the week, preferably Sunday, for prisoners to write letters.”

³¹⁰ ibid s 83, “He shall take care that every prisoner having a complaint to make or a request to prefer to him shall have an opportunity of doing so at some appointed hour of the day. He shall see that prisoners’ letters are dispatched within forty-eight hours of the application to write, and that petitions to the Governor are dispatched within one week of the application to petition. He shall patiently listen to his complaint, and he shall either take such steps as may appear to him necessary to redress any grievance, or shall report the same to the Superintendent.”

³¹¹ DSO 1956, s 591, “With reference to Statutory Prison Rule 230, a prisoner may write, or receive, a letter once in every calendar month irrespective of the date on which the previous letter was written, or received.”

³¹² ibid s 592 “All letters written by prisoners must be initialed by the Jailor as to their being bona fide letters from the prisoners mentioned in the letters and that the prisoners are authorized to write same.”

NRP alleged that he was unable to send letters to his family as they live in Canada, and letters were not being sent as he had not heard back from his family.

Prisoners stated they are able to clearly express their sentiments on paper as officers read the letters, which they fear would result in some form of reprisal, which prevents them from confiding to their family members. A prisoner mentioned that officers redact certain information in the letters if they don't want the outside world to know what is happening in prison. This is allowed by Section 597(c) of the DSO³¹³, which gives the SP the power to censor letters that complain about prison ill-treatment or contains criticism of the prison administration. However, Section 204(3) of the SRs states that where a prisoner has prepared a written communication with confidential instructions to his legal adviser, such communication shall not be examined by any officer of the prison unless the SP has reason to believe it contains matters other than legal instructions.³¹⁴ Thus, while censorship of letters may be necessary for safety and security, care should be taken to allow prisoners to confidentially communicate with legal advisers, or independent state entities, such as the Human Rights Commission to report grievances faced inside the prison.

Another problem the Commission noted is that the Rehabilitation Officers in many prisons have no proficiency in Tamil or English, which inmates said resulted in letters given to the Welfare Branch not being posted because there are no officers proficient in Tamil to read and censor the letters if required. This posed a specific problem for foreign national prisoners, for whom letters are often the only avenue of communication with their families, as they do not receive family visits³¹⁵. This issue was also mentioned during staff interviews when the Rehabilitation Officers mentioned the requirement of training programmes in languages, such as Tamil and English, to provide better assistance to prisoners.

7. Phone calls

In WCP, inmates were allowed to use phone booths to make calls to their family members as the prison has phone booths, which contain benches and phones to allow prisoners to make external calls. Inmates convicted for more than one year are allowed to make two calls a week for a total duration of twenty minutes to family and friends. The allocated time, i.e. the twenty minutes, is renewed every Sunday. This has proven to be beneficial to prisoners as they have an electronic means of communication to maintain contact with family members

³¹³ DSO 1956, s 597, "In exercising their powers of censorship in the matter of letters addressed to or written by prisoners under Statutory Prison Rule 20, Superintendents should note that all ordinary matter including news of public events should be passed. Objectionable matter falls within narrow limits, viz: - (c) complaints of prison treatment and criticisms of prison administration."

³¹⁴ SRs 1956, s 204 (3), "Where any unconvicted prisoner or civil prisoner prepares any written communication and states that it contains confidential instructions to his legal adviser, such communication shall not be examined by any officer of the prison unless the Superintendent has reason to believe that it contains matter other than such instructions. The provisions of rule 20 shall apply in the case of any other written communication prepared by any unconvicted prisoner or civil prisoner."

³¹⁵ For a detailed discussion on the grievances of foreign national prisoners, please refer chapter Foreign Nationals.

and legal representatives, instead of always having to use letters. However, the families of prisoners are required to make a payment for the prisoners' use of the phone, a sum of Rs. 100 per week for twenty minutes of talk time, which many prisoners reported their families find difficult to afford. The Commission was also told there are not many reload centres outside of Colombo, which poses another hardship for family members who have to travel long distances to top-up prisoners' phone booth credit. An allegation was also received against prison officers apparently blocking calls to the Commission in order to prevent inmates from reporting their grievances. It must be noted that the Commission has received calls from inmates from WCP telephone booths, wishing to communicate their grievances, and to inquire about complaints they made to the Commission. Prisoners in other prisons have suggested that a similar public phone booth, like those at WCP be provided in all prisons which all inmates can use.

Due to the limited channels of communication in prison, the Commission was requested by prisoners from various prisons to inform their families of their imprisonment and/or to visit them in prison – in total sixty-six calls were made to local and foreign family members of prisoners by the Commission. Some families that were contacted were not aware that a member of their family had been imprisoned. This is contrary to the SMR guidelines, which require prisons to allow prisoners to notify their families of the imprisonment. The Commission was informed by the Rehabilitation Division of the DOP that Rehabilitation Officers have now begun to make calls to prisoners' families to inform them of the imprisonment, while in the past they only sent letters. There is however no IDD connection at WCP, which prevents foreign national prisoners from making calls to family overseas.

8. Impact of the lack of means of communication on access to lawyers

A finding noted at most prisons was the lack of prisoners' access to lawyers. Most prisoners stated they would only come into contact with their lawyers at court, and that too would be only for a few minutes. Prisoners also informed the Commission that lawyers request extra payment if they are requested by inmates to visit them in prison. Remandees on bail or prisoners who were sentenced in lieu of a fine requested the Commission to inform their family members to post bail or pay the fine on their behalf, although there were some welfare officers who called families on behalf of prisoners. In some prisons, Rehabilitation Officers or location officers have called and relayed messages to families of inmates upon request. This was brought to the notice of the Commission in ACP, NRP and MCP, where some officers even went beyond their assigned duty to facilitate contact with family members. During the study, the Commission received sixty-four written requests for legal assistance and four written requests to assist prisoners to contact their lawyers.³¹⁶

³¹⁶ For a detailed discussion of access to lawyers, please refer chapter Access to Legal Representation.

9. Access to information on current affairs

SMR 63 states that prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the prison administration. SMR 117 gives unconvicted prisoners the right to procure newspapers, which is guaranteed for unconvicted prisoners and civil prisoners by Section 204(4) of the SRs in domestic legislation.

Section 571 of DSO states that the reading of current periodicals and newspapers is a privilege which, subject to good conduct and forfeiture by the SP for misconduct, is granted to all prisoners. Section 572 states that the cost of supplying periodicals and newspapers will be charged from public funds while newspapers sent by friends/relatives for individuals will be treated as gifts to the Prison Library.³¹⁷ According to Section 573 of the DSO, the SP can censor newspapers. Section 576 of the DSO states that newspapers and periodicals will be kept in the Prison Library or office or other convenient place and made available to prisoners, and prisoners under sentence of death will be allowed to read newspapers and periodicals in the special cells set apart for them.

The Commission observed that prisoners' access to newspapers is facilitated by providing one or two sets of newspapers and circulating them around the wards. This was found to be an unsuccessful method because by the time the newspapers reached the final ward, the newspapers would be crumpled and sometimes in tatters. Even though most prisons provided both Sinhala and Tamil newspapers, the provision of English newspapers was found to be inadequate. Also, censoring of newspapers by cutting out articles or pieces with regard to almost anything related to prisons was observed by the Commission. Officers and inmates stated that news articles on general crime, especially ones involving gang activities, were also censored.

The other means through which prisons provide access to current affairs is via televisions. Circular No. 24/2013 states that it is a duty of Welfare Officers to provide communication facilities to prisoners to increase their general knowledge. In most prisons, the Commission observed that every ward contained a television which the prisoners could watch from the morning unlock to 2200h. Televisions are usually donated to the prison by external organisations, but were also, in some prisons, procured by the inmates of a ward pooling their own funds. Inmates usually arrived at an arrangement amongst themselves when deciding on the channels to watch, sometimes equitably, sometimes not. Complaints were often received from ethnic minority prisoners and foreign nationals who were disgruntled at not being able to watch television channels in the language of their preference.

³¹⁷ DSO 1956, s 573, "The Superintendent is held personally responsible for and is given unfettered discretion over the strict censorship of all periodicals and newspapers sent into the prison. No newspaper should be sent into the prison unless it contains an endorsement franked thereon by the SP that it is free of improper, objectionable or undesirable matter."

Improper, objectionable or undesirable matter explained in 574 (h) which states that all references without exception to matters relating to the administration of prisons are objectionable.

10. General observations

The current state of prisoners' contact with family during imprisonment does not fulfil its purpose. Family visits are not conducted in a humane manner to encourage familial bonding; visit room infrastructure in most remand prisons falls far below acceptable standards, and when filled with large groups of prisoners and their families, leads to a cacophony of voices with individual conversations becoming indistinct. Similarly, most prisons do not enable efficient postal communication, thereby severely limiting access for persons whose family members cannot visit them, to remain in contact with their families. WCP is the only institution that provides prisoners with telecommunication facilities.

The Commission noted that visitors are not afforded due respect and often treated in a rude and inappropriate manner, particularly female visitors, which was a common cause of frustration among inmates. Further, the Commission observed that the haphazard manner in which the food brought for inmates during visits is checked by prison officers for contraband causes the food to become unappetizing or inedible.

Family visits are meant to bring comfort and joy to prisoners while they are cut off from the world during their sentence. However, the manner in which family visits are currently facilitated causes them to become a source of anguish for prisoners, and as a result many prisoners ultimately tell their families not to visit them in prison.

Although lawyers are allowed to meet with their clients in a separate room in most prisons, many prisoners cannot afford this as their lawyers charge additional fees to visit prisons, which results in many defendants only meeting their lawyers in court, at the hearing. When prisoners are virtually cut off from their lawyers due to lack of adequate communication facilities it is doubtful whether the defendant and appellant enjoy due process rights and the right to a fair trial to prepare an adequate defence.

The ability to maintain family relationships and ties is a significant determinant of an inmate's emotional well-being and capacity to cope with incarceration. Family support also facilitates ease of re-entry into society after release, and impacts the risk of reoffending. Hence, the prison administration must aim to provide adequate and effective contact with the outside world in order to prevent the alienation of prisoners from the community.

12. Grievance Mechanisms

"We only have the SP to report to if any injustice happens to us. To do that, we have to go through the SM Division but they don't direct us to the SP. The SP inquires into problems if report to him, but SM does not report it to the SP because it would get them into trouble. We actually don't have the chance to meet the SP. As in, we have to go there with an officer. We can't say anything to the SP because the officer is also there. Sometimes he visits the wards but even then, we cannot tell him anything because the officers are always around him".

Condemned, PCP

This chapter deals with the means, both internal and external, available to prisoners to lodge complaints, report grievances and make requests.

1. Introduction: internal grievance mechanisms

SMR 56(1) states every prisoner shall have the opportunity each day to make requests or complaints to the prison director or the prison staff member authorized to represent him or her.³¹⁸ The Rules further stipulate that prisoners shall be provided with 'a written document consisting of all information necessary to enable the prisoner to adapt himself or herself to prison life, including the rules, regulations, entitlements, disciplinary offences and sanctions', which are to be communicated effectively to all prisoners.³¹⁹ SMR 56 also states that a prisoner should not face reprisals of any kind as a result of making a complaint or a request, and should be afforded complete confidentiality.³²⁰

Numerous provisions of the national legislative framework require prison officers as well as the members of the Board of Visitors and the Visiting Committees to record the complaints and requests of the prisoners, to ensure the functioning of an internal grievance mechanism, which will be discussed in the subsequent sections of this chapter. The legal provisions related to internal grievance mechanisms shall be discussed in the specific thematic sub-sections of this chapter.

Section 719 of the DSO provides for the maintenance of a 'Complaint Book' for the purpose of recording complaints made by prisoners, which should include a brief statement on the nature of the complaint, its investigation and disposal, after which it will be recorded in the prisoner's individual record.³²¹

³¹⁸ SMR 2015, r 56 (1).

³¹⁹ ibid r 54.

³²⁰ ibid r 56 (2), "It shall be possible to make requests or complaints to the inspector of prisons during his or her inspections. The prisoner shall have the opportunity to talk to the inspector or any other inspecting officer freely and in full confidentiality, without the director or other members of the staff being present."

³²¹ DSO, s 270

It can be noted that the complaints made by condemned prisoners are given importance in the provisions of the legislative framework, probably due to the fact that the death penalty was being implemented at the time the Ordinance was enacted. Hence, the law was drafted in a manner which required their complaints to be addressed with urgency and care. Section 628 of the DSO discusses complaints lodged by condemned prisoners and requires them to be noted by a jailor or a deputy jailor, and to be as far as possible, in the exact words used by the prisoner. It states that the noting of complaints of condemned prisoners is never to be entrusted to an officer below the rank of deputy jailor. Furthermore, Section 629 of the DSO, sets out the procedure to be followed in forwarding the petitions of condemned prisoners as follows:

‘Petitions from condemned prisoners, when sent to the Commissioner’s office, should be accompanied by the usual Prison Report and marked ‘Urgent’ outside the envelope, and they are to be dispatched on the date they are signed by the petitioner. In Colombo, such petitions should be sent at once by hand to the office of the Commissioner [of Prisons]’

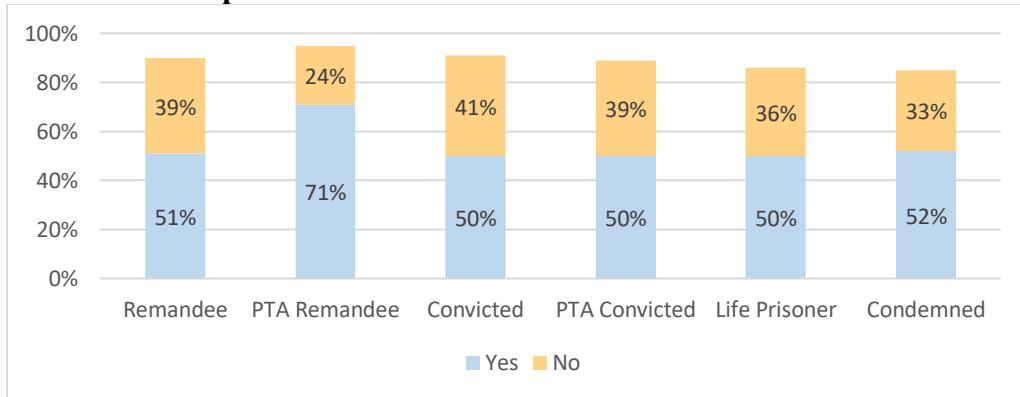
In addition to the above-mentioned provisions, Section 630 of the DSO stipulates the formalities that should be followed when forwarding petitions from condemned prisoners, which includes noting the date fixed for execution and signed by the officer who wrote the petition with a certificate in the following form appended to the petition by the SP of the prison:

‘I certify that I have read and explained to the petitioner the contents of this petition and that he has stated that it is a correct record of what he has stated to me. I certify also that he has signed it in my presence’.

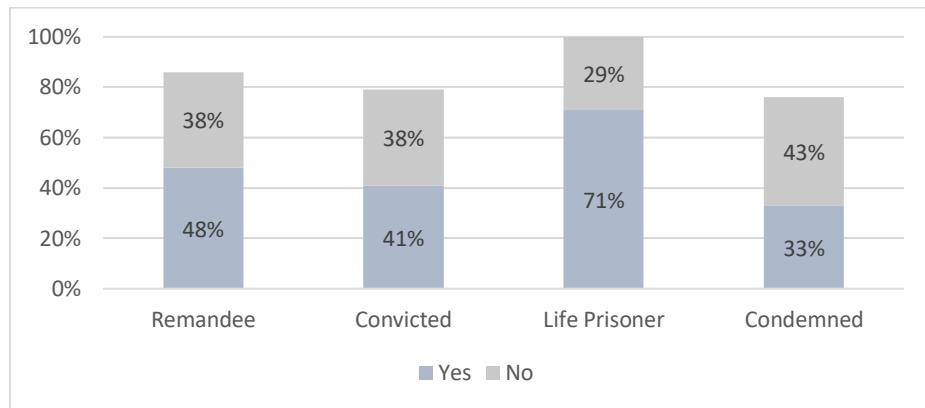
1.1. Inclination of prisoners to lodge complaints

Of the total number of respondents, 51% of men and 47% of women stated that they would report if they had an issue with an officer. This is reflected across prisoner categories, both male and female, in graph 12.1 and graph 12.2 below.

Graph 12.1 – Male respondents across prisoner categories on whether they would report an issue with a prison officer

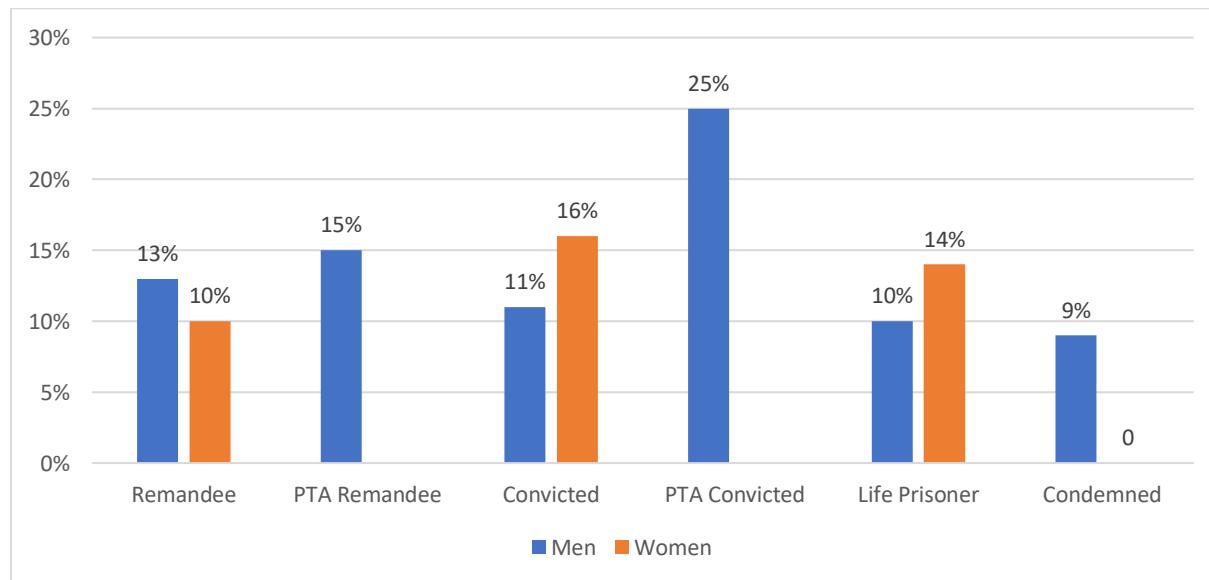


Graph 12.2 – Female respondents across prisoner categories on whether they would report an issue with a prison officer



According to the graph of male and female respondents across prisoner categories who were prevented by prison officers from making complaints, PTA convicted male prisoners constitute the highest, with 25% stating they were prevented, while 15% of PTA remandees said the same. Other significant responses were received from female convicted and life prisoners, with 16% of the former and 14% of the latter stating they were prevented by prison officers from making complaints.

Graph 12.3. – Male and female respondents across prisoner categories who were prevented by a prison officer from making a complaint



The following section of this chapter will set out the duties of the different officers as well as divisions of the prison that are expected to function as internal grievance mechanisms to provide redress to prisoners.

1.2. The roles of the Superintendent and Chief Jailer in addressing grievances

The SP of a prison is required, as per Section 16 of the SRs, to visit the yards, cells, kitchen, latrines and every part of the prison at least once a month and ensure that prisoners are allowed to make complaints directly to him. Furthermore, Section 15 of the DSO requires the SP to hold a brief inquiry on the spot whenever a complaint with regard to ill-treatment, assault or any such irregularities on the part of the officers is made, followed by the appointment of a jailor to obtain statements from witnesses, if necessary. The provision corresponds with SMR 57(3), which states that allegations of torture or other cruel, inhuman or degrading treatment or punishment of prisoners shall be dealt with immediately.

Section 83 of the SRs states that the jailor of a prison must ensure that every prisoner who has to make a complaint or a request has an opportunity to do so at some appointed hour of the day. The Rule further states that the jailor must take any steps required to provide a remedy to the issue faced by the prisoner, or report the issue to the SP for further action. Furthermore, Section 84 of the SRs states that the jailor of a prison has the duty to inform the SP in writing, the names of the prisoners who requested to meet the SP, a Commissioner of Prisons or a Visitor from the Board of Visitors.

At present, one way through which prisoners seek remedies for their grievances, as observed by the Commission, is by complaining directly to the SP or the CJ of the prison when they undertake their inspection rounds. Hence, inspection rounds are of paramount importance as highlighted by the SP of BATRP at the time:

“You have to go to the prison. You have to go on rounds, go to the wards, and talk to the remandees and the convicted. You can't stay in the office and expect everything will be ok. If prisoners can talk to you and tell you their problems, they don't have to tell their problems to outsiders like HRC... Prisoners should be able to trust the SP so they can come and tell if officers harass them.”

This was reiterated by the then SP of ARP at the time Mr. A.K. Bandara who stated as follows:

“I once advised a young SP of another prison that he needs to regularly visit the cells and wards of the prison. He has to go on inspection rounds, go to the wards and talk to the prisoners. You can't stay in the office and expect everything to be fine. If prisoners can talk to you and tell their problems, they don't have to tell their problems to external parties. Prisoners should be able to trust the SP so that they can come and tell if other officers harass them.”

The method of complaining directly to the SP was preferred by some inmates due to the inaction of subordinate prison officers in previous instances when inmates made complaints. A remandee in ARP described how they prefer to meet the SP in person to share their grievances as follows:

"If there is a problem in the ward, we inform the SP sir. He comes to the ward, takes us to a corner and lets us talk to him in private. Therefore, we always inform the SP whenever an issue comes up."

However, according to the narratives of prisoners, it didn't appear that inspections were undertaken by all SPs or CJs on a regular basis, which was described by a condemned prisoner at ACP as follows:

"Now what we have is an Acting CJ. He is supposed to check the well-being of the prisoners and check if everything runs smoothly but I have not yet seen him. I don't know if he goes to other wards as well. The cells are separated from rest of the prison. We cannot see anything else from here."

Although multiple CJs and SPs stated that prisoners are free to approach them, interviews with inmates indicated that meeting a senior officer would not always be easy. A convicted prisoner in POPC described how he had to chase the vehicle of the SP to meet him and even then, they had no confidence that their issues would be resolved:

"This place is getting worse. If I have to tell something personal, I have to wait until I see the SP's vehicle and go tell him. We cannot do that every day. Even then there is no point telling our problems to the SP and the CJ here because it won't be solved. It will not be solved. It will never be solved."

Similarly, a convicted prisoner in ACP brought to the Commission's attention that the offices of the SP and CJ are located outside the premises of the wards, which makes it difficult to access them. "It is really hard to meet the SP. When we want to meet him, we have to scream at the top of our voices and hang on to the doors of the wards." This, however, varied from prison to prison. For instance, the CJ of WCP at the time mentioned that any inmate is free to approach him when he is in the office, which was corroborated by prisoners.

Alternatively, if prisoners wish to meet the SP or the CJ in person, they have to inform a Rehabilitation Officer, jailor or a prison officer in charge of the ward in which the inmate resides of his/her wish, which will be conveyed to the SP or CJ. WCP, for instance, maintains a request book in the RC Branch in which prisoners can write their request for a meeting with the SP of the prison to complain about their grievances. A condemned prisoner in WCP mentioned that through this mechanism, inmates are able to obtain an opportunity to meet the SP within two days.

During the interviews, inmates mentioned that even though they believe superior officers, such as the SP and the CJ, would provide redress to their problems, they face difficulties accessing them due to the need to channel the complaint through multiple officers until it reaches the CJ or SP. This would most likely lead to the request not being conveyed either accurately or in a timely manner when one or more of the links in this chain of communication do not function efficiently. A convicted inmate at ACP stated, "We're not allowed to meet the Superintendent and when we make a request, they say 'get lost'".

A remandee in BRP mentioned that even though the SP has invited the prisoners to bring any issues they face to his attention, subordinate officers try to prevent the prisoners from making complaints to the SP. Hence, despite the invitation of the SP, the prisoners are under the impression that they are not entitled to make suggestions as that would constitute interfering in the administration of the prison. As he expressed it:

"When we try to make a complaint, other officers try to stop us from complaining. There are problems like that. But SP asked us to always tell him. We cannot get involved in the administration even though we have the opportunity to tell the SP."

A remandee in MCP described his failed attempt to meet the SP in person to bring a grievance to his attention due to being prevented by subordinate officers. According to him, inmates have to write in the request book if they wish to meet the SP, but officers at the SM Branch did not permit him to fill the request book, alleging that the prisoner was making unnecessary requests. Furthermore, the officers in the SM Branch had inquired about the reason the prisoner wished to meet the SP and when the prisoner replied saying that it was personal in nature, the officers had chased the prisoner away denying him the opportunity to meet the SP. The prisoner described it thus:

"When you try to write, the officer will ask "why are you here? Go, go, don't fill the book unnecessarily; get out of here". If we ask to meet with SP, they will ask "why do you want to meet SP? For what reason?" I replied saying that "I want to talk to the SP as this is a private matter". They insulted me in abusive language and asked me to get out of the office."

This indicates that even when senior staff members are attentive to the needs of prisoners, the mechanisms to address grievances may not be efficient if prisoners have to go through a number of subordinate officers to meet with the SP or CJ. It is particularly so when prisoners have to complain about subordinate officers, because in such cases the prisoner's request to meet with the SP may not be communicated to the SP. The success of the mechanism hence depends on the personal integrity and efficiency as well as compassion of the prison officers.

Certain categories of prisoners might encounter additional obstacles accessing the SP or CJ. For instance, a special prisoner, such as a condemned prisoner, must be accompanied by a guard to go to the office of the CJ and hence will be able to access senior officers only when an officer is available and willing to escort. A condemned prisoner from WCP mentioned that due to the peculiar nature of their sentence, which is indefinite, they are in need of a grievance mechanism that results in their concerns being addressed promptly.

A Nigerian national in CRP narrating his experience of the internal grievance mechanism stated that even when the senior officer was receptive and instructed subordinates to take necessary action to resolve the problem, their failure to follow up to check whether their instructions have been carried out leads to the issue remaining unresolved. He explained it thus:

"All fourteen Nigerians are in one room. We complained to the Chief Jailor and to the officers several times but they did not do anything. So, last week they complained to the Chief Jailor again and the Chief Jailor asked the other officers to give the Nigerians another room. After the Chief Jailor left, they said that they're not giving the Nigerians any room and we are still in the same room."

Even in instances when the SP and/or CJ undertake inspections or when prisoners are given the opportunity to meet with said officers, inmates stated that they are reluctant to voice their concerns to them due to the presence of other subordinate officers within proximity, who they fear may overhear the conversation, which would result in reprisals. As a convicted prisoner from WCP said:

"We have to go with an officer and we are unable to express our ideas properly because the officer is also there. We have things that need to be brought to the attention of the SP but we don't get the chance to do that. Even though he visits the wards sometimes, we can't tell him anything because there are other officers surrounding him."

Although the lack of privacy and confidentiality was a common concern expressed by many inmates, some inmates stated that privacy is ensured when they lodge complaints via meeting the SP in his office. A convicted prisoner from KWC stated as follows:

"There's an officer who takes us to the SP when we have requested to meet him and he goes away in order to let me talk to the SP in private. It is possible for me to open up about my concerns since there is privacy."

Female inmates mentioned they are able to meet with the SP or CJ when they visit the female section of the prison, and female inmates indicated that the number of routine visits they make largely depend on each senior officer. While in some prisons female interviewees commented on the helpfulness of the CJ or SP, others mentioned they hardly see them. A female inmate of WCP for instance mentioned that the female officers attend to their problems to the extent possible and, in the event they are not able to resolve the matter, it will be referred to the CJ of WCP. She said:

"If we tell the lady officers that we have to meet the CJ, they will make necessary arrangements for us to meet him and without a doubt the chief sir will give us that opportunity. We are either summoned to the male section or the Chief Jailor comes to the female section."

The Commission observed an initiative taken by a SP to enable prisoners to make complaints directly to him easily, which could be instituted in other prisons as well. The SP of BRP at the time Mr. Rohana Galapaththi provided a book to each ward to record their requests and grievances. The book was kept in the ward and any inmate who had a request or a complaint could write it in the book, which was brought to the SP every day by his office party, i.e. the prisoner who is assigned to work in his office, and is inspected by the SP every day. The SP then refers the request or the complaint to the CJ, the Welfare Branch or the SM. It was

observed by the Commission that the books had requests for cleaning equipment, requests to fix a broken bulb, to fix a broken TV or a fan etc. These requests were written in Sinhala and Tamil. SP stated that he found sometimes prisoners are not used to speaking in front of others regarding the issues they have and therefore by introducing the books, he expected prisoners to be able to write whatever they would like to inform the SP. It is not required to write one's name or prisoner number when making a request or complaint.

Another issue encountered by prisoners is the language barrier, as most officers were found to be proficient only in Sinhala due to which Tamil-proficient and foreign national prisoners find it difficult to complain about issues they faced. A convicted male from JRP, whose mother tongue is Tamil mentioned that since senior officers are also not proficient in Tamil when junior officers fail to provide remedies for their grievances the prisoners are prevented from approaching senior officers, such as the SP or CJ. As he stated:

“If I have a problem, I have to meet the SP, who is Sinhala, CJ and the jailor are also Sinhala. If we want to say anything, we must say that in Tamil since it is our mother tongue. If there's an officer who understands Tamil, we can talk to him but it's pointless telling them.”

A convicted prisoner in JRP described the hardship faced by the inmates due to both the SP and CJ not being Tamil speakers:

“I try to manage with the other inmates whenever a problem comes up. If we go to the SP or CJ to complain we get into trouble. We need a SP or a CJ who knows and can understand Tamil properly. Only then will the officers understand our problems as they are.”

Despite the majority of complainants stating they would report an issue they had with a prison officer to the prison authorities, the Commission came across interviewees who stated that prison officers, including the CJ and SP, are often biased in favour of the officers against whom a complaint is made. This in turn leads prisoners to believe their complaints will not be dealt with in a fair and just manner. The perspective of the inmates is that the officers are naturally biased in favours of their own officers, which renders the internal grievance mechanism ineffective. As a female remandee stated, “Uniform is always with uniform. Prisoners only have other prisoners”. A PTA remandee in ARP echoed this as follows:

“The superior officers will always stand by the officer. Even if we complain about an officer, they will only listen to his side of the story. They will not listen to ours. They won't solve it for us. That's how we feel here. I don't know how it works for the other prisoners but when we have complained about officers not opening the doors soon enough for our visits or to go to the doctor, the superior officers have disregarded it.”

A female remandee in WCP mentioned that the officers tend to justify the actions of other prison officers, and apart from not obtaining a remedy, inmates who make complaints are targeted for reprisals. She stated:

"The officers will never take our side and we feel helpless in such situations. When I voiced the concerns of the inmates, the person who spoke about the problem, that is I, was put in a cell and locked. Those who were suffering from the issues initially and were reluctant to make a complaint managed to stay out of the bad books of the officers. I spoke on behalf of all the ladies. Ultimately, those inmates sided with the female officers and I was isolated. I became the wrong doer at the end, and I was put into a cell and locked."

1.3. The role of the School Master Branch in addressing the grievances of prisoners

The SM Branch is in charge of maintaining the discipline of prisoners and receiving complaints from inmates against other prisoners as well as officers. Inmates can approach SM officers directly, or they may report a grievance to the prisoner in charge of their ward (kamara party) who is tasked with bringing it to the notice of the officer-in-charge. The SM Branch will report the incident to the CJ and SP, and the SP will appoint the jailor in charge of SM or any other jailor deemed appropriate by the SP to conduct an inquiry. The jailor will take statements from the prisoners involved in the matter, and the officers if necessary, and report to the SP. The SP, based on the report of the jailor will take necessary action, such as assigning prisoners who are involved in a dispute to separate wards.

A common allegation leveled against the SM Branches in many prisons is that they deny prisoners the opportunity to refer their complaints/grievances to senior officers of the prison. The reason for this, as stated by a remandee in KGRP is:

"The SM doesn't direct us to the SP even if we report to them. The SP looks in to our problems if we bring such concerns to his attention but the SM is reluctant to do so since the officers of the SM will be in trouble for the failure to attend to our grievances properly and promptly."

As a remandee prisoner in PCP described it:

"We can go to the SP through the SM branch. However, there will be officers of the SM around and we don't get a chance to tell anything to the SP in private. Even though we can make our complaints to the SM branch, we prefer the SP because it is useless to make complaints to the SM officers."

On the other hand, a convicted prisoner from WCP said that he submitted a request to the SM Branch of WCP to meet the CGP with regard to a grievance, and within three days of making the request he was able to meet the CGP who had provided a remedy to the inmate. It should be noted that the opportunity for a prisoner in a prison outside Colombo to meet a superior officer, such as the CGP, who is based at Headquarters, is limited. This limitation arises due to several reasons such as inadequate vehicles and prison officers to accompany

the prisoner to Colombo due to which a request of a prisoner to meet the CGP or any other superior officer of the DOP will be delayed.³²²

1.4. Welfare Branch

The responsibility for the welfare of prisoners, as stated in the Mission Statement of the DOP³²³, falls within the purview of Rehabilitation Officers, who until 2014 were identified as 'Welfare Officers'³²⁴. While the Welfare Branch performs a multitude of functions in a prison, this section of the chapter mainly focuses on the role of the welfare branch related to the requests made by and grievances of inmates, and the manner in which they are addressed by the Welfare Branch.

Regarding complaints made by prisoners, rehabilitation officers of different prisons mentioned that they always ensure there are no prison guards or other officers around when a prisoner is making a complaint, since it might involve sensitive information. The Commission, during the visits observed that prisoners freely walk into the Welfare Branch without being accompanied by uniformed officers. It is must also be mentioned that a Rehabilitation Officer is equal in rank to a jailor even though the duties assigned to the two officers are different.

Where treatment and conditions are concerned, Rehabilitation Officers mentioned that one of the primary grievances or concerns of newly admitted prisoners include access to sanitary items, such as toothbrushes and soap, and means of communicating with their families. Rehabilitation Officers usually perform the function of managing and distributing basic and necessary provisions that are received by the prison and also assist families of prisoners with their needs related to education and livelihood assistance. Upon inquiry from the Rehabilitation Division at Prisons Headquarters, the Commission was informed that, despite the fact there are no means of providing any form of support to inmates' families, once a person is convicted and sent to prison, the Rehabilitation Officer visits the house of the prisoner to evaluate the family's financial situation. A report is then submitted to the relevant government departments and institutions recommending that the families be given state welfare packages, such as *Samurdhi*, Student Aid (*Shishyadara*)³²⁵ and *Mahapola*³²⁶. Given that the state funded welfare packages can be very limited, the Rehabilitation Officers also forward the report on the family situation to the sub-committee of the Prisoner Welfare Fund

³²² For a detailed discussion adverse impact of the lack of officers on transfer of prisoners, please refer chapters Access to Medical Treatment and Challenges faced by the Prison Administration.

³²³ Department of Prisons, The Mission, "Creation of a good relationship between the prison officers and the inmates in order to achieve the main objectives of custody, care and corrections and thereby improve the job satisfaction of the officers and buildup positive attitudes among officers and regulate the welfare of the prisoners, utilizing their productivity of labour for the benefit of the country." www.prisons.gov.lk/vision/vision_english.html accessed 3 November 2018.

³²⁴ www.prisons.gov.lk/History/history_english.html accessed 3 November 2018.

³²⁵ Student Aid (*Shishyadara*) is a monthly financial aid provided to children who come from low income families, out of the pool of students that have successfully passed the national exam for Grade five students.

³²⁶ *Mahapola* is a monthly financial aid provided to students from low income families that have been successfully enrolled in a degree course at a state university.

at the relevant prison.³²⁷ Private donors, institutions and well-wishers are then contacted by the sub-committee or members of the sub-committee themselves provide scholarships, family assistance and in certain instances housing to the families of prisoners in need. The Chief Rehabilitation Officer explained to the Commission that since this is an effort taken by the Prisoner Welfare Fund, most assistance depends on the availability and the willingness of private donors.

The Chief Rehabilitation Officer further narrated instances of individuals supporting the welfare of the families of prisoners, such as a nun in Colombo who provides 200 scholarships a year to children of prisoners, the provision by several High Court judges in Tangalle of scholarships to children of prisoners a few years ago, and an instance, of a High Court judge anonymously providing financial assistance to the daughter of a condemned prisoner, until she graduated from university. The Commission noted that the inmates also request the Welfare Branch to provide monthly financial allowances in the form of scholarships to their children since the father's imprisonment often results in financial hardship for families. In such instances, even though the Rehabilitation Officers were unable to provide monthly allowances, given that there are no such provisions in the PO and no financial allocations for the DOP for such activities, some prisons have made arrangements for the children of the prisoners from low-income families to be exempted from paying fees for private tuition classes.³²⁸

1.5. Board of Visitors & Visiting Committee

The PO has provisions for the Minister in charge of the subject of Prisons, to appoint a Board of Prison Visitors for all prisons in Sri Lanka presided by a chairperson and six other members who do not hold public office.³²⁹ According to Section 800 of the DSO, members of the Board of Prison Visitors can enter any prison within the purview of the Department of Prisons at any time for the purpose of discharging their duties. This Board currently does not exist. Furthermore, four persons who are not members of the Board and who do not hold any public office are appointed as the Local Visiting Committee for each prison. Members of Local Visiting Committees have access only to the prison to which the Committee is assigned. All appointments are made according to Section 35(1) of the PO, and the Minister has the power to remove any visitor³³⁰. The appointment process and the qualifications of the visitors are not specified in the legislation, thereby creating room for arbitrary appointments to be made in a non-transparent manner.

A visitor is defined as a member of the Board of Prison Visitors or the Local Visiting Committee of a Prison or an Additional Prison Visitor.³³¹ Section 800 of the DSO describes Visitors as 'friends from outside, disinterested and unpaid, to cooperate with the prison staff

³²⁷ For a detailed discussion on the Prisoner Welfare Fund, please refer chapter Rehabilitation of Prisoners.

³²⁸ For a detailed discussion of the role and general duties and responsibilities of the Welfare Branch, please refer chapter Rehabilitation of Prisoners.

³²⁹ PO No.16 of 1877, s 35 (1)(a).

³³⁰ ibid s 35(3).

³³¹ ibid s 104.

in the maintenance of discipline and good administration in the prisons', and the visitors provide prisoners with the opportunity to voice their concerns regarding food and ill-treatment in the prison. SPs and prison officers are directed to provide necessary assistance to visitors to discharge their functions and duties. The visitors have power to visit any prison at any time, freely access any part of the prison or any prisoner and inspect the diet and the general conditions of detention of the prisoners.³³²

The Chairperson of each Local Visiting Committee should ensure that at least one member of the Committee visits the prison at a minimum once a week.³³³ The Chairperson of the local visiting committee assigned to a prison is vested with the duty to hear any complaint that a prisoner wishes to make.³³⁴ Section 801 of the DSO provides that a prisoner who has submitted his name to meet any Visitor should be produced before the Visitor and the complaints, which can be dealt with on the spot shall be dealt with immediately. Section 41(1) of the PO provides that a visitor has the power to hear any complaint of a prisoner with regard to the quantity or the quality of the food or any other ill treatment.

Each prison is required to maintain a complaint book for any Visitor to record complaints received by them during the visits.³³⁵ Section 802 of the DSO states Visitors should record the complaints and requests they have received and similarly, members of the Local Visiting Committee should also record the complaints made to him/her by prisoners and the action taken by the member regarding such complaints.³³⁶ The Visitor should report to the CGP, and can also bring any complaint made by a prisoner, which in the opinion of the Visitor is sufficiently serious to require the intervention of a Court of law to the attention of the AG. This is done via sending a report of the complaint to the AG while a copy is required to be sent to the CGP.³³⁷ This provides the Visitor with considerable discretion and power to independently bring serious complaints to the attention of external authorities for necessary action. However, due to the non-functionality or lack of full-functionality of the Committees this does not take place in practice.

It must also be noted that making groundless complaints or inciting others to do so is an offence against prison discipline³³⁸ for which the SP or a Visitor in the absence of the SP, has the power to punish prisoners.³³⁹ The provisions in the PO do not expressly provide guidelines or a procedure to be followed in determining whether a complaint is groundless or to determine the punishment, and instead provides a list of punishments in Section 79. Furthermore, according to Section 41(2) of the PO, a Visitor who finds a complaint of a prisoner to be frivolous or malicious, has the power to order such a prisoner to be confined in a punishment cell for a maximum of forty-eight hours while the prisoner can be placed

³³² ibid s 37(1).

³³³ ibid s 36 (3)(a).

³³⁴ ibid

³³⁵ ibid s 38 (1)(a)(iii).

³³⁶ ibid s 36 (4)(e).

³³⁷ ibid s 41(3)(b).

³³⁸ ibid s 78 (xix).

³³⁹ ibid s 79.

under a restricted diet. As mentioned in chapter Discipline and Punishment³⁴⁰, empowering a Visitor, who is an external entity and not a part of the prison administration the authority to inflict a punishment stated in Section 79(a)-(g) is cause for concern since the visitor is neither a prison officer with legal authority to impose a punishment nor a member of the judiciary. Further, the PO does not provide for a mechanism to ensure the accountability of a Visitor with regard to the aforesaid authority to punish prisoners. Moreover, as described above, the appointments of the visitors are made by a political authority, which calls into question the independence and the impartiality of the Visitors.

There are restrictions imposed on the powers of the Visitors and the purpose of these restrictions is to prevent the interference of the Visitors in the general administration of the prison, especially with regard to prison officers. According to Section 803 of the DSO, Visitors are required to differentiate between legitimate complaints and general requests by prisoners, but Visitors are not authorized to issue administrative orders relating to the discipline, management, labour, expenditure, punishment of prison officers, as well as general administrative and executive control of a prison. Furthermore, Section 37(2) of the PO states that prison Visitors cannot hold inquiries, make observations or recommendations with regard to the appointment, transfer or promotion of any prison officer, or supervision, control and discipline of prison officers.

In 2016, Visitors Committees were appointed for all except eight prisons. However, according to the observations of the Commission, even at the prisons at which they have been formed these Committees they do not appear to be fully performing their functions. Thus, prisoners are deprived of an objective third-party complaint mechanism through which they can refer their complaints to senior officers or higher authorities. There is also a need for an objective and transparent procedure to appoint Visitors to a prison since currently the MOJ makes the appointments and there is no established formal criteria or process followed in the appointment process. When appointing members to the Committees, it has to be borne in mind that the membership has to be representative in terms of gender and ethnicity. Further, members have to be persons with the required knowledge and expertise that will ensure they will prioritize the well-being of the prisoner in an objective manner. Prisoners should also be allowed to communicate with the Minister regarding a Visitor who may be acting contrary to their duties or against the interests and rights of prisoners, thereby increasing the accountability of such persons.

1.6. Mechanisms to address complaints of violence

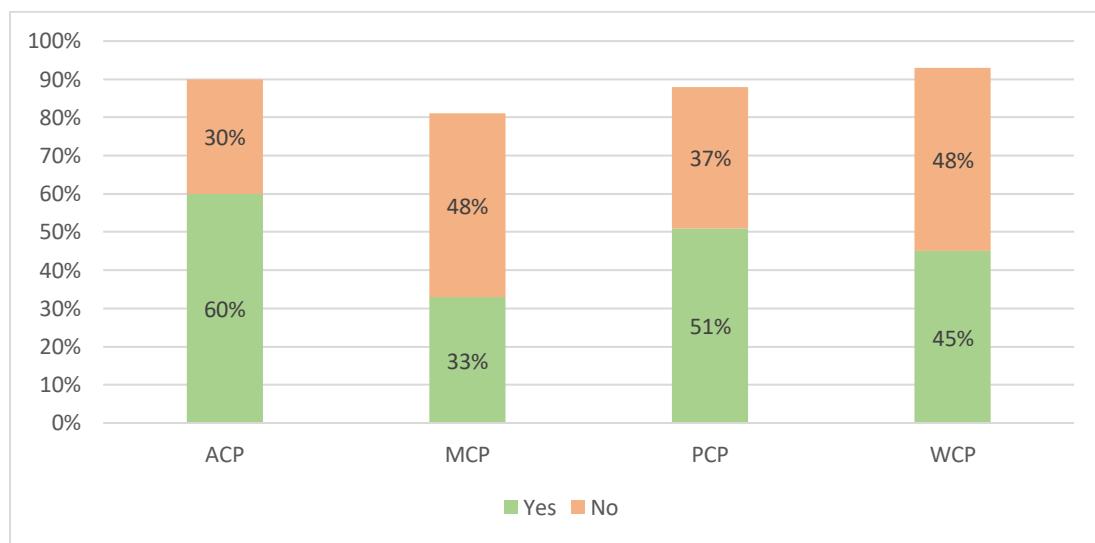
While 50% of men and 48% of women respondents said they would not report if they were physically assaulted by an officer, a statistically significant portion of the respondents (8% of the men and 11% of the women) chose not to answer the question and instead wrote next to the question, “To whom do we report?”, “I am afraid”, “I will get beaten up more [if I report against an officer]”, “No point reporting”, “Can tell you [the Commission] only”. This echoes the narratives of prisoners who stated they felt it is pointless to complain about officers to

³⁴⁰ For a detailed discussion, please refer chapter Discipline and Punishment.

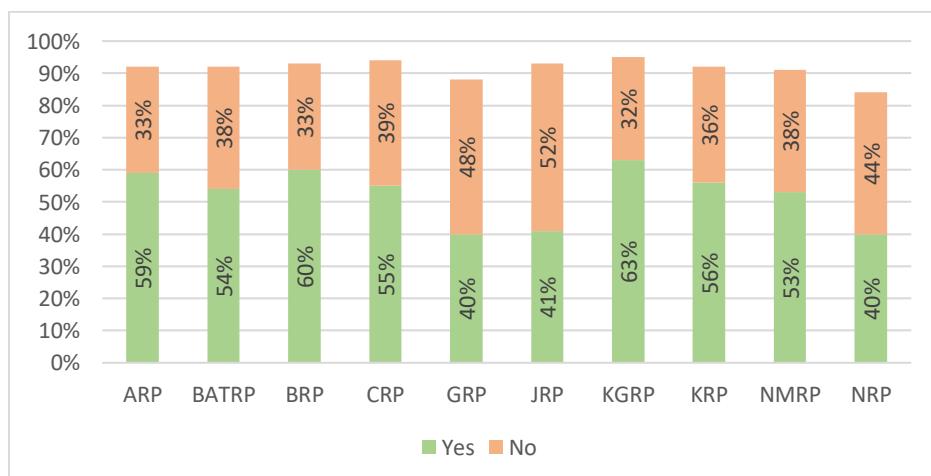
senior officers because they felt they and senior management would be biased in favour of prison officers.

Regarding reporting of violence by a prison officer, 54% life prisoners, 51% convicted prisoners, 49% remandees, 48% condemned prisoners and 41% PTA prisoners, stated they would not report violence to senior officers. Among the women, according to their prisoner categories, the majority in every category stated they will report violence at the hands of prison officers, with 71% of life prisoners, 52% of remandee women, 48% of convicted women and 44% of condemned women, saying so. The graphs below set out the men and women across prisons who stated they would complain about physical violence by a prison officer.

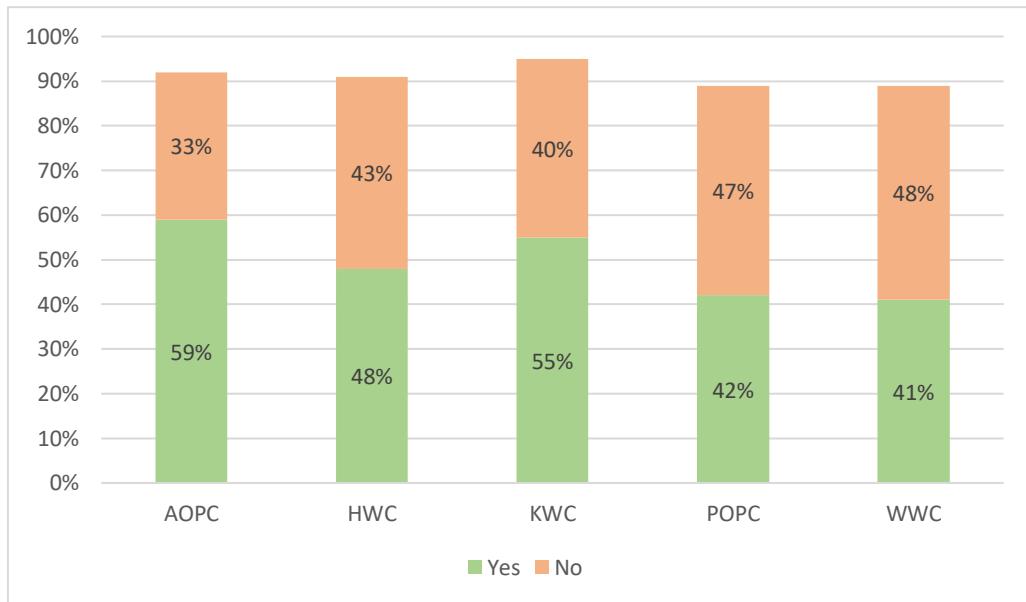
Graph 12.4 – Male respondents across closed prisons on whether they would complain about physical assault by a prison officer



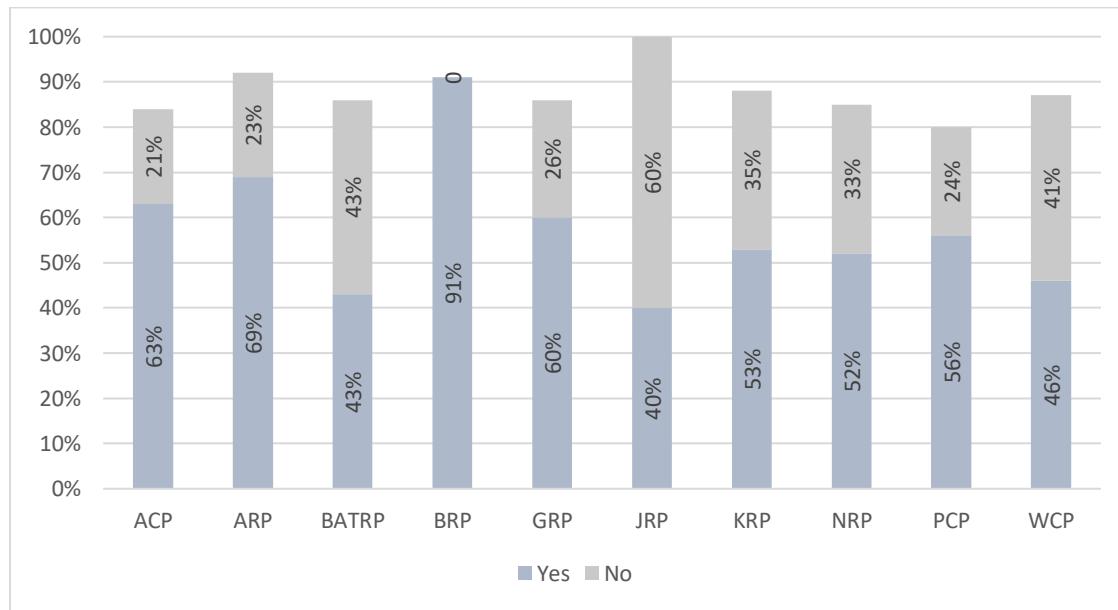
Graph 12.5 – Male respondents across remand prisons on whether they would complain about physical assault by a prison officer



Graph 12.6 – Male respondents across open prisons and work camps on whether they would complain about physical assault by a prison officer



Graph 12.7 – Female respondents across prisons on whether they would complain about physical assault by a prison officer



When an officer assaults an inmate, the complaint can be made to the SM Branch, the CJ or the SP directly. A jailor will be appointed to conduct an inquiry by the SP, and after obtaining statements from the relevant parties and the witnesses, a report will be submitted to the SP. If the officer is found guilty under the First or the Second Schedule of Chapter XLVIII of

Volume II of the Establishment Code, the relevant punishment or a warning is given once the report is presented to the Prisons Headquarters. The SPs who were interviewed stated that they appoint a jailor to conduct a preliminary inquiry when complaints about ill-treatment by prison officers are received, following which charges can be filed according to the Establishment Code against the relevant officer if the act or omission amounts to an offence as provided in First or the Second Schedule of Chapter XLVIII of the Volume II of Establishment Code. A remandee in PCP described the manner in which, in his experience, officers of the SM Branch handle the complaints related to fights and violence in prison as follows, “If there was a fight, they [the officers] hit us once or twice. If not, they refer the matter to the SM; I mean they direct it to the disciplinary unit and inquire into it. They don’t take any action if an officer is involved”.

According to the narratives of some prisoners, such as a PTA remandee from NMRP, the superior officers pretend to warn the subordinate officers when a prisoner makes a complaint while refraining from taking further action against the officer.³⁴¹ As he described it, “If the issue is with [junior] officers we can report to SP or CJ. They follow a method in which they will yell at the officer when we make the complaint but never take an action against the officer afterwards.”

1.7. Effectiveness of the grievance mechanisms

The Commission also received positive comments about prison officers who address complaints promptly with empathy. A PTA remandee who described his experience as follows:

“At my last interrogation they [CID] beat me up. Once I arrived at the prison, I complained to the prison officers about this incident. I informed the SP. Then through the Welfare authorities they sent a letter to the Judge and I got the opportunity to appear before the judge and narrate my story.”

A female remandee from PCP mentioned that the jailors and guards were always ready to listen to the problems of the inmates and the female officers were always willing to help them and advise them on their post-release life. Similarly, a female remandee from WCP stated that when she reported discriminatory treatment by other inmates, the officers took action:

“The inmates don’t want to accept the Tamil inmates as equals at times. However, the officers treat us equally. I had such an issue once but when I told the officers they intervened and spoke to everyone and now we have no problems.”

³⁴¹ For a detailed discussion of violence and ill treatment by prison officers, please refer chapter Discipline and Punishment.

The Commission observed a positive initiative in NRP where a notice board had information in all three languages about the type of complaints prisoners can make and the officers in charge of handling various types of complaints. Given that all foreign nationals who are arrested at the Bandaranaike International Airport (BIA) for various offences are remanded in NRP, providing information in English is a key step in ensuring their rights during incarceration are protected.

Yet, the examples in this section illustrate that the success of internal grievance mechanisms largely depends on the personalities of the staff members tasked with resolving grievances. The inadequacy of alternatives to address the issues of the prisoners apart from the involvement of the prison officers in the grievance mechanism has made the role played by such officers vital. As a consequence of inadequate alternatives for prisoners, any failure of prison officers to facilitate the complaints and requests of the prisoners and take prompt action in that regard will render the entire grievance mechanism ineffective.

2. Access to external grievance mechanisms

'There is no one to look into these things. No other Ministry from outside comes to observe what goes on inside the prison. If they do this routinely, even the food problem inside will be solved but there is no one to come here and check these things. So, these people control everything inside according to their whims because there is no one to look into what they do.'

Condemned, PCP

This section will examine the effectiveness of the different types of external grievance mechanisms to which prisoners may have access.

2.1. Ministry of Justice

The DOP falls under the purview of the MOJ. However, the Commission observed a general lack of oversight of prisons by the MOJ, which would lead to reduced means of holding prison administrations accountable for their conduct.

During the interview with the MOJ focal point for prisons, the Commission was able to note that the Ministry was primarily concerned with infrastructure development and the relocation of prisons, rather than overseeing the day-to-day functions of prisons. For instance, during the interview, it came to light that the MOJ focal point was unaware that the phones in the PCP visit room had not been functioning since 2017, despite their claim that prison visits are undertaken twice or thrice a month.

A department must function with adequate oversight of the line ministry for the department to be held accountable in the discharge of its functions. Importantly, the lack of ministerial oversight also removes an important external grievance mechanism for prisoners to lodge complaints about prison officers or the prison administration. Further, the result of a lack of

awareness of prisoners' grievances may result in the policy decisions of the MOJ failing to effectively address the shortcomings in the current correctional system or respond to the needs of prisoners. For instance, the MOJ focal point informed the Commission about the Ministry's plans to cease allowing food from outside to be received by prisoners. However, remand prisoners obtain food from outside since the food in prison reportedly falls far below acceptable standards of quality and hygiene. The lack of awareness of the MOJ of the needs and concerns of prisoners, the impact of incarceration on an individual and his/her family and the purpose of a rehabilitative correctional system which aims to ensure social re-integration of incarcerated persons, is reflected by the following comment of the MOJ focal point who stated, "It looks like they enjoy being in prison. They should know that the time they are spending is a punishment. We should prevent them from the view that coming into the prison is a better option."

The MOJ focal point informed the Commission that they will be installing letter boxes for prisoners in all prisons to lodge written complaints to the Ministry and letters would be collected by the Ministry once a month. As the only avenue for prisoners to correspond with the line Ministry, care should be taken to ensure that such a communication channel is maintained efficiently, without being intercepted by prison officers, and complaints must be collected and responded to swiftly.

2.2. Magistrates and District Judges

Section 39(2) of the PO states that any Member of the Parliament, District Judge or Magistrate has the power to inspect the general conditions of the prison and the health of the prisoners between the hours of 0530h and 1730h, while Section 39(4) states that every District Judge and Magistrate is considered as a Visitor and can exercise the powers and functions of a Visitor. Furthermore, the aforesaid Visitors can record their observations and the recommendations in the Visitors' book. Section 39(3) of the PO provides that the copies of the entries made by the Members of Parliament, Judges of the Supreme Court, Court of Appeal, High Court, District Court and Magistrates must be sent to the CGP. Even though many prisons maintained a Visitors' book, the Commission noted that only some contained recommendations by Visitors to improve the conditions of detention while the majority of entries merely mentioned they visited the prison.

The Magistrate of the area to which a prison belongs, is required under the Release of Remand Prisoners Act No. 8 of 1991 to visit the prison for the purpose of granting bail to eligible prisoners.³⁴² Upon inquiry from all the prisons in the study, it was found that in remand prisons, as well as closed prisons that hold remand prisoners, Magistrates visit the prisons at regular intervals. In WCP, which only holds convicted prisoners, a one-off visit was made by a Magistrate on 02 March 2019 who inspected the entire prison and inquired about the treatment and conditions of the prisoners. WCP RC jailor also informed the Commission that a Magistrate visits the WCP female section and the PH once a month and that the prison is given prior notification to make necessary arrangements.

³⁴² For a detailed discussion, please refer chapter Legal and Judicial Proceedings.

In most cases, the Magistrate visits once a month. Prison officers stated that the Magistrate would review the files of those who had been granted bail but were unable to post bail or fulfill bail conditions. For example, the RC officer from KGRP stated that the Magistrate would review the files of such remandees and if the remandee's case falls within his/her court, the bail amount would be reduced, or bail conditions would be amended. The RC officer further stated that this is the case for minor offences, such as illicit alcohol brewing or consumption, and minor theft charges. When a remandee who needs amendment of bail conditions but does not belong to the visiting Magistrate's Court is presented to the Magistrate, the Magistrate instructs prison officers to send a letter to the relevant court requesting that bail be reviewed.

Officers of remand and closed prisons, except WCP, also stated that the Magistrate would occasionally conduct ward rounds, giving an opportunity to remandees and convicted prisoners to talk to the Magistrate. In KGRP, the RC officer stated that in certain instances the Kegalle Magistrate has even asked prison officers to give him privacy while talking to inmates who had grievances. In GRP, the RC officer stated that when the Magistrate visits on a holiday, such as Poya day, they would go on rounds, since on other days if the Magistrate comes to prison after court duties, s/he may not have time for ward rounds. In all open prison camps and work camps, the Commission was informed that the Magistrate visits only to hold Prison Tribunals and does not visit for the purposes of speaking to the inmates.³⁴³ In prisons such as CRP and NMRP, the Magistrates in Colombo visit on a roster basis. The Magistrate of Hulftsdorp No. 6 court often visits CRP, while NMPR is visited by all Colombo Magistrates except the Mt. Lavinia Magistrate, as Mt. Lavinia court is located a long distance from NMRP. In POPC, the CJ informed the Commission that since Magistrates are required to inquire into the conditions of bail, as per the Release of Remand Prisoners Act and the Bail Act, their visits are more relevant to the prisons where remandees are housed.

2.3. Human Rights Commission of Sri Lanka

According to SMR 56(2), 'It shall be possible to make requests or complaints to the inspector of prisons during his or her inspections. The prisoner shall have the opportunity to talk to the inspector or any other inspecting officer freely and in full confidentiality, without the director or other members of the staff being present.'

In the national context, the Human Rights Commission has the power to monitor the welfare of persons detained in custody by regular inspection of their places of detention, and to make recommendations to improve their conditions of detention.³⁴⁴ The Commission also has the power to accept and inquire into allegations of violations of fundamental rights, such as torture, and issue recommendations. Due to the large number of prisoners who wanted to meet officers of the Commission with regard to their grievances, additional days were allocated during the visits to obtain such requests. The Commission received a total of 459

³⁴³ For a detailed discussion of the Prison Tribunal, please refer chapter Discipline and Punishment.

³⁴⁴ Human Rights Commission of Sri Lanka Act No. 21 of 1996, s 11 (d).

complaints and requests from inmates during this study, regarding their treatment and conditions in prison.

As an independent commission, the Commission can refer complaints and requests made by prisoners to the relevant State authorities and also make a representation to the SPs on their behalf. The unfettered access the Commission has to places of detention, without the need to give prior notice, is crucial to receive complaints from prisoners, which is the only unfettered means through which prisoners can make complaints about rights violations to an independent body mandated by law to inquire into them. Statements by prisoners reveal the need for an independent body to which prisoners can report grievances, particularly when they feel the internal grievance mechanisms of the prison are not impartial. As a prisoner said:

“I know about the Human Rights Commission, even though I haven’t been to the Commission. That is the only place in which we have faith and even the prisoners who were beaten up say that they would go to the Commission to tell their stories when they are released.”

The fact that inmates have to be released in order to inform the Commission of custodial violations they allegedly faced indicates the need to strengthen the means by which prisoners can access the Commission, with adequate confidentiality and privacy.

One category of prisoners who were often overwhelmed to see the Commission were the foreign inmates who found life in prison harder compared to the local inmates. A female remandee from Venezuela held in NRP mentioned that it was a relief to speak to someone from outside the prison since she didn’t have any relatives or friends in Sri Lanka, and communicating with the prison officers was difficult due to her mother tongue being Spanish and the only other language in which she was partially proficient was English.

Inmates reported a positive change in the manner in which the prison was administered since regular visits were undertaken by the Commission. There was reportedly an improvement in the quality of the food and a reduction in the aggressive approach of some prison officers towards the prisoners. This indicates that the presence of the Commission encourages prison officers to follow human rights standards on the treatment of prisoners. This was expressed by a convicted prisoner from WCP thus:

“Now, since the Human Rights Commission started visiting the prison, they don’t beat us. The situation was different earlier and they used to beat us for the slightest mistake from our side, break our bones and lock us up.....”

The need to ensure prisoners have unfettered access to external authorities to state their grievances, such as the Commission, was illustrated by the statement of a condemned prisoner from WCP who stated:

“I wrote a letter and kept it with me to send the Human Rights Commission. Since I did not have the facility to send it, I had to keep it with me. However, I

managed to hand it over to an officer of the Commission when they visited the prison."

A YO in HWC described their fear of prison violence and the desperate situation they find themselves in due to the fear of facing reprisals when they make a complaint thus:

"No one complains even if we get assaulted or if one dies. There is no one to look up to or seek help from. We can only complain when people like you (the Commission) come. Otherwise there is no one to tell and we are helpless even if we get beaten up, injured or our bones are broken."

A convicted prisoner stated to the Commission:

"There is no one for us to talk to or complain about a problem in detail. Now you have come here to talk to me and it's the first time in thirty-eight years someone has sat and listened to me for hours. No one has ever asked me the questions you asked. Who else is there for prisoners like us? Who is going to listen to us? Even those who come here, they would know the truth and still cover it up and go away."

The large number of complaints and requests the Commission received during visits for the prison study illustrate the need to have a regular mechanism through which grievances can be forwarded to the Commission without being censored.

Reprisals faced by inmates as a result of complaining to the Commission are discussed in section 5.1 of this chapter. It must be mentioned that a number of prisoners expressed concerns about making complaints to the Commission due to the delays and inaction in inquiring into the complaints they had made in the past. This was corroborated by information gathered during the prison study that the family members of some inmates had lodged complaints with the Commission with regard to assault and other rights violations in prisons, but the Commission had not visited them to obtain statements or to inquire into the wellbeing of the prisoners. Instead, in some instances, the Commission had requested reports from the prison authorities, who had then obtained a statement from the prisoner to be forwarded to the Commission. This in some instances, had resulted in reprisals, which undermines the purpose of an independent mechanism, such as the Commission. When these past incidents were brought to the attention of the Commission, action was taken to review the complaints and provide the necessary relief to prisoners.

3. Communication with other external authorities

The Commission also observed that condemned, life and long-term prisoners request prison authorities to forward their grievances to various authorities, such as the MOJ, the Office of the President and the Chief Justice. Even though there are inmates who successfully managed to send letters and receive responses, some inmates complained that they were not aware whether their letter was sent by the prison to the relevant authorities since they had not

received a response. The Commission observed the lack of awareness of the prisoners about the laws relating to grievance mechanisms, such as Sections 628 and 629 of the DSO, which require prison officers to convey the complaints of condemned prisoners with immediate effect to the CGP.

A mechanism is required to refer the complaints of prisoners to authorities, such as the Legal Aid Commission (hereinafter referred to as LAC) and the MOJ, and to ensure that effective communication channels are maintained and organized processes established to forward their requests.³⁴⁵

Foreign inmates frequently wished to communicate grievances to their consular representatives and due to the lack of local contacts, were observed to encounter difficulties in obtaining legal assistance.³⁴⁶

4. Types of grievances

The main kinds of requests and grievances reported by prisoners are as follows:

4.1. Transfers

Inmates have frequently requested to be transferred to other prisons where they may be situated closer to their families and would be able to receive frequent visits. Tamil prisoners in particular, requested transfers so they could seek medical attention from doctors who speak their mother tongue.³⁴⁷ Such requests are made to the Welfare Branch by prisoners, which forwards the request to the SP, or the request can be made directly by a prisoner to the SP during inspection rounds or by meeting the SP. The SP conference, which is a regular meeting of all SPs and Commissioners of Prisons and the CGP, takes place at the Prison Headquarters every three months, and provides a means for SPs to discuss and find solutions to, among other issues, the transfer of prisoners. The Commission received such requests for transfer, which were forwarded and discussed with the relevant SPs of the prisons, who have the discretion to authorize a transfer, or to the CGP.

4.2. Medical requests

The Commission received requests related mainly to delayed access or the lack of access to medical treatment. Although such requests were discussed with the relevant SPs, it has been

³⁴⁵ For a detailed discussion on means of communication in prison, please refer to chapter Contact with the Outside World.

³⁴⁶ For a detailed discussion on the grievances of the foreign nationals, please refer chapter Foreign Nationals.

³⁴⁷ For a detailed discussion, please refer chapters Access to Medical Treatment and Contact with the Outside World.

noted that delayed medical treatment is often the result of severe staff shortages and the lack of transport and resources provided to the DOP.³⁴⁸

4.3. Assaults in prison

Prison assaults are of two main types; assaults perpetrated by inmates and assaults by prison officers. When a prisoner assaults another prisoner, the victim can make a complaint to the SM Branch, and one of the officers of the branch will obtain statements from the prisoners involved in the fight as well as from the witnesses. The SM Branch then reports to the SP of the prison who will decide the punishment or produce the accused before the Prison Tribunal.³⁴⁹ However, it was regularly mentioned by prisoners in various prisons that when they complain to the SM Branch about a fight between two prisoners, both the prisoners face the risk of being assaulted by prison officers.

The second type of assaults, perpetrated by prison officers on prisoners, are discussed in the chapters Discipline and Punishment and the Continuum of Violence.

4.4. Ward conditions and access to personal hygiene products

The Commission noted that prisoners request sanitary items such as soap, toothpaste and tooth brushes from the Welfare Branch and the response to such requests vary depending on the availability of resources. Some inmates in MCP mentioned that requests for soap have to be made to several Rehabilitation Officers and despite multiple reminders the branch had failed to provide the provisions. The SP of BRP took the initiative to establish a stall within the prison premises, from which inmates can obtain items such as razors, tooth paste, tooth brushes or soap, free of charge. The initial stock of sanitary items was received from an external donor and the SP expected to maintain the stall through the contributions of prisoners who receive extra sanitary items during the visits or the leftover sanitary items which they might donate when they are being released from the prison.

5. Reprisals for making complaints

The threat of reprisals for lodging complaints is a direct contravention of the provisions of the SMRs. According to SMR 57(2), a prisoner must not be exposed to any risk of retaliation, intimidation or other negative consequences as a result of having submitted a request or complaint. Apart from the prisoner, this rule is also applicable to the legal advisor, member of the family of the prisoner or any other party who has the knowledge of the complaint. Even though the national legislative framework in PO, SRs and DSO contains provisions to

³⁴⁸ For a detailed discussion on the types of medical complaints and the procedure followed in handling such complaints, please refer chapter Access to Medical Treatment.

³⁴⁹ For a detailed discussion on Prison Tribunals, please refer chapter Discipline and Punishment.

facilitate the recording of the complaints and requests of the prisoners, no express provision prevents the threat of reprisals to a prisoner who lodges a complaint.

The fear of reprisals occurs as a result of witnessing or personally experiencing acts of reprisals. When prison officers subject inmates to physical violence and degrading treatment, inmates described the fear of being subject to further harassment and physical violence, if they reported the offending officer. A female remandee from WCP described how her confidence in the grievance mechanism was lost due to being assaulted by prison officers the only time she wanted to make a complaint:

“To whom do we report madam? There is no place to report. The only time I complained I was beaten up. They did not care about it, so no point complaining further. Inmates complain but they (the officers) do not care about it. It is a wasted effort as there is no result.”

One convicted prisoner from WCP stated, “basically, they can come and harass you any time they want” while another convicted prisoner from the same prison reported, “They get to know it’s you who made the complaint and then you have to expect a rough time ahead” – thus illustrating the lack of confidentiality in the process.

A foreign inmate mentioned that prison officers in the female ward use the fear of reprisals to prevent them from bringing their grievances to the attention of the judge when the inmates are taken to Courts on their respective Court dates. This was especially with regard to the treatment and conditions of the prison. The inmates alleged that officers of the female ward allocate them extra tasks, such as cleaning and sweeping, as a form of reprisal if a complaint against the prison or the officers is made before the Court. As a female remandee from NRP stated:

“The officers think that we want to complain about something related to the prison. Even when you go to court, they try to threaten us because they are worried we are going to report them. They say that we are not allowed to complain to the judge and maybe when we come back, they will make life harder for us. For instance, when you return from court, they will make you sweep the compound all the time. It is harassment.”

The forms of reprisals to which prisoners are subjected for lodging complaints against officers, as mentioned by inmates, include being framed for the possession of contraband, transfers to other wards, transfers to other prisons as well as threats and assaults. It should be noted that if an inmate is found in possession of a mobile phone, s/he can be produced before the Prison Tribunal, which can result in the period of incarceration being extended. Hence, if a remandee is convicted by the Prison Tribunal the person’s status will change from remandee to convict, while a convicted prisoner will have to serve additional time in prison. Fear is therefore created amongst inmates, reportedly by threatening to frame the inmates for disciplinary offences and produce them before the Prison Tribunal.³⁵⁰ The fear of being

³⁵⁰ For a detailed discussion, please refer chapter Discipline and Punishment.

sentenced by the Tribunal prevents an inmate from complaining against officers, and in some instances leads to the withdrawal of a complaint made. In KRP, a prisoner sentenced to life described how he was forced to withdraw a complaint made by him against a prison officer who assaulted him thus:

"I was asked to withdraw the complaint if I wanted to continue staying in this prison (KRP). If not, they will either remove all your belongings or promise more facilities to make the stay more comfortable in the prison. So, I was forced to withdraw, otherwise I wouldn't have done it. I let the other guy down as well, you know. So, I withdrew my complaint and they conducted an internal inquiry. The internal inquiry accused me of assaulting the officer and it was ridiculous. This particular officer who was allegedly assaulted by me was a well-built man of about six feet in height and weighing about 250 pounds."

Reprisals also included being subject to physical violence by the same officer against whom the complaint was made. Such incidents were narrated by interviewees from prisons in the Northern, Western, Eastern and Southern Provinces thus:

"I tried complaining and I was beaten. When I try to meet the SP to complain all the other officers get hold of me and hit me. Despite this, if I speak to the senior officer when he comes on his rounds, he would just scold me in filth and tell me to go away. After that, the officers would hit me again for going and talking to the superior officer. This is what happens here."

Male Remandee, BATRP

"...then, I was not allowed to talk with Sir [CJ], I was dragged down and assaulted by two guards. They hit me twice on the ear. Then I spoke up and I said I would report it to the SP. For speaking up and saying that word, I was severely assaulted there."

Male Remandee, NRP

The overwhelming threat of physical violence is a reason many inmates state they are reluctant to lodge complaints about officers' misdeeds. As a few prisoners narrated to the Commission:

"Because you know... if some permanent damage is sustained by the prisoners, and they stay like a vegetable in the hospital, the Sri Lankan government will not pay one rupee. You understand? They don't care about these people. That's why, that's why I try to avoid these kinds of problems."

Male Remandee (foreign national), CRP

"When we tell the officers that we will complain to the judge, they threaten us saying we have to come back to prison after speaking to the Judge, and they can hit us again when we come back as we are under their custody."

Male Remandee, PCP

"If I complain about it to the jailor, he'll say shut your mouth and scold me using foul language and he will beat me."

Male Remandee, BATRP

The changing of wards or transfer to another prison is one reason inmates are hesitant to make complaints against prison officers even in instances of custodial violence. The SP of a prison for instance can transfer an inmate due to various reasons, such as obstruction to the administration of the prison. It was observed that with time prisoners build a rapport with fellow prisoners and become familiar with the prison and their respective cells or wards. A degree of respect is gradually gained by a prisoner in his respective cell or ward based on his seniority, and prisoners' fear of losing this respect when they are transferred to a different cell, a ward or prison is palpable. This was described by a remandee from GRP who shared a cell with two other inmates as follows:

"I don't want to move from my cell. You don't understand it sir. I have been in this cell for the longest time and I receive respect for my seniority from the other two prisoners. If I am transferred to a different cell or a ward I have to start from the beginning. I might get to sleep close to the toilet since I am new to the ward."

This was described by a convicted prisoner from WCP thus:

"People don't like to be transferred and especially me. This becomes your home with time, and there is always a risk of being transferred to another prison and you don't know where you are going to be transferred. You have no rights here."

A convicted prisoner from JRP expressed his fear of being transferred to WCP since he is a native of Jaffna. The lack of language proficiency in Sinhala, in the opinion of the prisoner, will make his sentence even harder if he is to be transferred to a prison where the majority of prison officers speak Sinhala and is a long distance from his area of residence, which would make it difficult for the family to visit him in prison. In his own words:

"Even if we complain about one prison guard to another officer, they will either beat us or completely disregard us. Otherwise they will send us to Welikada. It is hard for us there. We won't be able to receive visits and it is a Sinhala area. We'll have to just listen to everything they [officers] say without being able to understand anything properly."

A life prisoner in KRP described his perspective on why the prison authorities are reluctant to let the prisoners access an external mechanism for their grievances, while he mentioned that the transfers from one prison to another will be used against the inmates who attempt to make such complaints:

“Most of the time, this institution does not like to disclose anything that happens inside the institution to the outside world. The institution does not like it if the higher administrative authority learns about internal issues. What happens is that they will entangle us in different problems, take disciplinary action against us and they will transfer us to different prisons all around the country.”

However, it was also mentioned by an inmate that obtaining a remedy and possible reprisals varies according to the complainant. For instance, prison authorities are said to be reluctant to act against an inmate who is educated and has knowledge of his or her rights or against those on death row. As stated by a convicted prisoner from PCP:

“It’s also about your personality, your social status and your confidence. You must be confident enough to raise your voice against an injustice. The majority of the prisoners is very passive and lack confidence. They believe that they’ve committed an offence and they should be punished for that and that affects their confidence negatively.”

The reluctance to make complaints due to the fear of reprisals adversely affects the psychological well-being of prisoners and can even cause suicidal thoughts. During the interviews, a condemned male inmate mentioned as follows:

“It’s all the same for me. I’m waiting to die. If the officers come to assault me, I will not have second thoughts about cutting myself with something, and they are the ones who will have to answer. Due to these reasons our mentality is not good. If I direct my finger at someone and make an accusation, I will no longer be able to talk to anyone since I will be handcuffed and put in isolation somewhere.”

5.1. Reprisals for speaking to and making complaints to the Human Rights Commission of Sri Lanka

Numerous comments were received from inmates through interviews, where inmates expressed their fear of suffering reprisals at the hands of prison officers for speaking to the Commission about their conditions and treatment in prison. As a remandee from NRP stated:

“Now that I have spoken to you [Human Rights Commission], even after two or three months, when I wait in the queue to receive my diet or when I’m praying, the officers will use the first opportunity they get to beat me. For instance, if I knock an officer by mistake, they will beat me up and change my ward.”

There were also instances where some prison officers reportedly threatened inmates, upon the arrival of the Commission, and told them not to reveal any information about the inadequate treatment and conditions in the prison, allegedly claiming those who failed to

abide by their orders would suffer consequences. Prisoners who had lodged complaints with the Commission reported they had been pressured to withdraw those complaints by the respondent prison officers. A prisoner informed the Commission that he was being harassed and receiving death threats from an officer for speaking to the Commission during the prison visit, and the inmate therefore wished to be transferred to another prison.

It was also revealed by a convicted prisoner in WCP, that a prison officer who came to his ward with a few other prison officers, discouraged the inmates of the ward by threatening them not to make complaints to the officers of the Commission; "HRC cannot help you and always keep in mind that you are stuck with us [prison officers]" The Commission was informed of other such incidents that had taken place in WRP, MCP, NRP, GRP and KGRP. At WRP in particular, the Commission was informed that officers had been told of the Commission's visit and hence had reportedly warned inmates not to disclose details of their treatment and conditions in prison. The officers had further cleaned wards and even shifted inmates to different wards prior to the arrival of the Commission, as a result of which the integrity of the findings from WRP were compromised and were not included in the study.

Some inmates who had made complaints to the Commission against prison officers also alleged that they were threatened to withdraw their complaint or to change the statement given to Commission.³⁵¹ According to a convicted male in WCP, a fellow prisoner who suffered a fracture in the leg due to an assault by prison officers was threatened to withdraw his complaint made to the Commission. Another convicted prisoner at WCP described how the prison officers react when they see prisoners having conversations with the officers of the Commission:

"They [prison officers] ask questions like 'what did you say?', 'what did they ask?' soon after you leave. If you [the Commission] go and question the prison officers about what I have told you I will definitely be sent somewhere else in an escort or I will be locked up in a cell or a place where I cannot approach you."

It must be highlighted in this regard that the Commission continues investigations into cases of torture even in the event the complainant requests the complaint to be withdrawn.

6. General observations

The Commission observed that inmates in all prisons presented their grievances to the Commission without reluctance. The primary avenue for prisoners to lodge a complaint is to the SP or CJ of the prison. However, this procedure does not offer adequate privacy and anonymity as the SPs and CJs are rarely ever directly accessible to prisoners and must always

³⁵¹ For a detailed discussion on such allegations, please refer chapters Discipline and Punishment and The Continuum of Violence.

be accessed through subordinate prison officers, or in the presence of other prisoners during their rounds.

The Commission observed that some issues faced by inmates, especially grievances related to provisions such as personal hygiene products, queries relating to Home Leave and License Board, and facilitating contact between the inmate and family members, could easily be addressed internally by prison authorities. It was further noted there were delays in addressing these grievances, and in some cases the inmates had not even considered using the internal grievance mechanism of the prison due to the experience of other inmates whose attempts to find redress were unsuccessful.

It was observed in many prisons that prisoners often request pen and paper from the Commission to write their requests and complaints, which reflects their inadequate access to stationery within the prison, thereby preventing them from being able to send complaints to external entities.

Except on rare occasions, inmates did not show any hesitation in mentioning the names of the officers who were responsible for violations, including custodial violence.

Prisoners have access to external grievance mechanisms such as the independent Commissions and Magistrates, but once again, their access to these institutions is restricted due to the limitations of the communication channels in prison. As a result, prisoners can only access them when such external parties visit the prison. It was observed by the Commission that prisoners had in their possession letters they have written to AG, MOJ or to the President, which had not been posted. In particular, the condemned and life prisoners and prisoner who had been convicted long-term had such letters. The reasons the letters had not been posted ranged from refusal by the prison authorities to send the aforesaid letters and sometimes the reluctance of prisoners to hand over such letters to the prison authorities due to the fear of being subjected to reprisals. Even though some prisoners managed to send their letters through the prison to external authorities and receive replies, a considerable number of prisoners did not have confirmation on whether the prison authorities posted their letters as they had not received an acknowledgment from such external authorities.

The fear of reprisals preventing prisoners from making complaints, as well as incidents of reprisals due to making complaints to the Commission were also observed in many prisons. The fear of reprisals exists due to the prisoners' own experiences of violence or the narratives of the fellow prisoners who were subjected to reprisals in various forms, such as change of wards, transfers to other prisons and even physical assault, when they attempted to seek remedies to their problems through the internal grievance mechanism or through external mechanisms.

13. Inmate-Officer Relationship

"Prison officers should not act in a biased way. They should treat all inmates equally. It is wrong to treat their relatives differently, the rich differently, neighbours differently and persons from their village differently. They shouldn't be like that. All inmates are the same and all officers are the same. An officer is still an officer whether he's older than me or younger than me, and we obey their words. We don't argue with them. If an officer says, don't stay here or go to that side, we will go because he's an officer, but they don't act like that."

PTA Prisoner, BATRP

1. Introduction

An element that impacts the daily life and emotional well-being of inmates is the interpersonal relationship they share with prison officers. Inmate-officer relationships vary according to the different methods an officer uses to manage inmates.³⁵² The officers must maintain the right balance, whereby on the one hand they must not establish close relationships with inmates, since that would put them at risk of being exploited and diminish their ability to assess situations objectively, and on the other hand, they must exhibit some level of empathy and take an inmate's personal circumstances into consideration.³⁵³

SMRs 1 and 2, state that all prisoners should be treated with the respect due to their inherent dignity and value as human beings. They also state that no prisoner shall be treated in a degrading or inhumane manner. Further, they provide that all laws shall be applied equally and that no one should be differentiated on the grounds of race, colour, language, political opinions, national or social origin, or religion. Importantly, SMR 2(2) recognizes that the protection and promotion of a vulnerable category of prisoners will not be deemed discrimination.

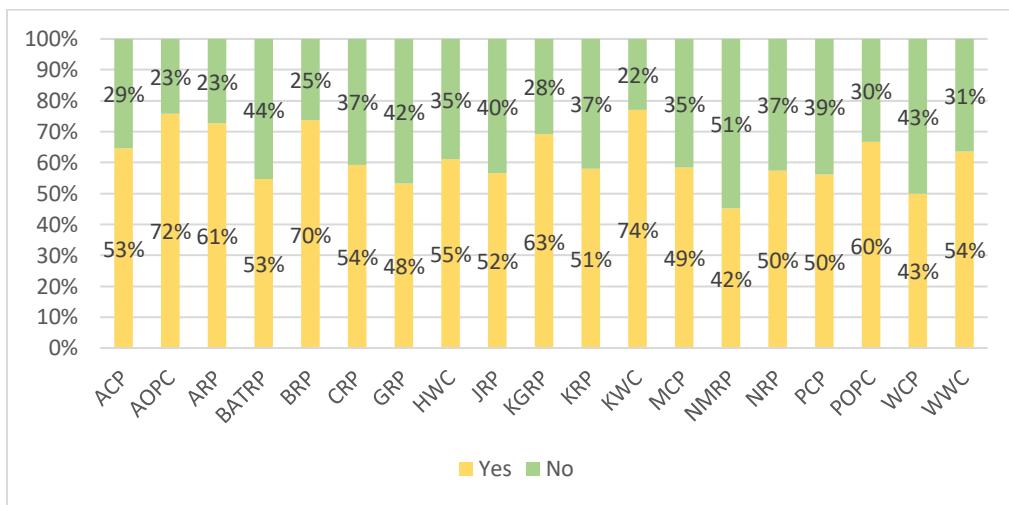
Although there are no equivalent provisions which emphasize the fair treatment of prisoners in the PO, SRs and DSO, Article 12 of the Constitution of Sri Lanka provides that all persons are equal before the law and are entitled to equal protection of the law, and Article 12 (2) protects persons from discrimination on the basis of various grounds.

³⁵² United Nations Office on Drugs and Crime, *Handbook on Anti- Corruption Measures in Prison*, October 2017, Criminal Justice Handbook Series, p 15.

³⁵³ Torsten Kolind, 'Drugs and Discretionary Powers in Prison: The Officer's Perspective' (April 2015) 26 (9) International Journal of Drug Policy 800.

2. Ill treatment of prisoners by prison officers

Graph 13.1 – Male respondents on whether prison officers treat them with dignity and respect



One of the ways in which the inmate-officer relationship was assessed was via the manner in which officers treat inmates on a daily basis. As depicted in the graphs above, the rate of respondents who felt they are not treated with respect and dignity is high in the majority of prisons. A convicted prisoner from KRP stated thus, “(There is) no relationship. They treat us like dogs”, while a remandee from the same prison said, “Prison officers treat us in an unfair manner. They have a law to follow, but they do not do so. They eat and drink our things and then they hit us. They perform their functions while violating our human rights. They never do their duty properly”.

The Commission noted instances of prisoners being ordered to provide massages to, or polish shoes of prison officers. This was observed first hand at ARP, where an officer was seen receiving a head massage from an inmate, and at NRP where the inmate was massaging an officer's feet and shoulders. The Commission also observed officers' shoes and belts in prisoner cells that were given to prisoners to be polished. A remandee from BATRP described it thus, “Some officers tell us to massage their legs. The officers misappropriate the food supply sent for the prisoners. They are all normal people so these officers use them. They get prisoners to massage and polish their shoes”. A prisoner in KRP said that if an inmate refuses to fulfil such demands of an officer, they are either beaten or scolded in abusive language. Due to the power dynamic that exists in prison, inmates are often placed in vulnerable positions where they cannot refuse the demands of the officers.

Prisoners stated that officers often verbally and physically abuse inmates while they perform their day-to-day activities. Reportedly, prison officers choose to engage in such abusive behaviour in the presence of other inmates, so that it functions as a warning to other

inmates.³⁵⁴ For instance, a prisoner said that the officers scold them even for minor deviations from prescribed rules, such as being late to the morning count queue or to collect food, not bathing within the allocated time, talking to another inmate from another section etc. Some prisoners stated that even basic commands are issued using abusive language and violence is used to reprimand inmates who commit minor transgressions or behaviour the officers deem inappropriate, as illustrated by the following remark by a male remandee from KRP:

“Recently they beat a person in a very inhumane manner, the beating was severe because he sang a song or shouted or something like that during the early morning “unlock” time. After the polling was over, he was told to kneel down and an officer came and kicked him. They had their shoes on, no? Boots were on, no? They kicked him and brought a club afterwards and beat his soles.”

It was noted that the treatment of prisoners varied according to the prisoner category.³⁵⁵ While inmates on remand uniformly raised concerns of discrimination and ill treatment, convicted and condemned prisoners in remand prisons stated officers have a reasonably amicable relationship with them. As stated by an inmate in PCP, “There is a problem here. There is a difference between a remandee and a convicted. Remandees have less rights. There are more privileges for the convicted”. The other aspect of the relationship between prison officer and long-term prisoners is that the prisoners, knowing they have to spend a considerable time in prison, try to maintain a functional relationship with the officers and also do not complain about infractions by the officers, and hence were found to be on better terms with the authorities. This in turn results in long-term prisoners being perceived to be treated better by officers, as illustrated by an inmate at WWC who said, “They give privileges to the inmates who have been here for a long time, because the officers meet them frequently and they are used to them”. A convicted prisoner at BRP stated, “Here, they don’t help or give importance to new (newcomers) people, they only give priority to the old (those who have been in prison longer) people”. This however does not preclude ill-treatment of convicted prisoners.

Amongst convicted prisoners, condemned prisoners were observed to treated noticeably better than convicted prisoners. As discussed in the chapter Prisoners on Death Row, condemned prisoners often reported that officers treat them better, because they either feel empathy for the condemned prisoners or are afraid that they might engage in disruptive or violent behaviour since condemned prisoners feel they have nothing to lose given the status of their sentence.³⁵⁶

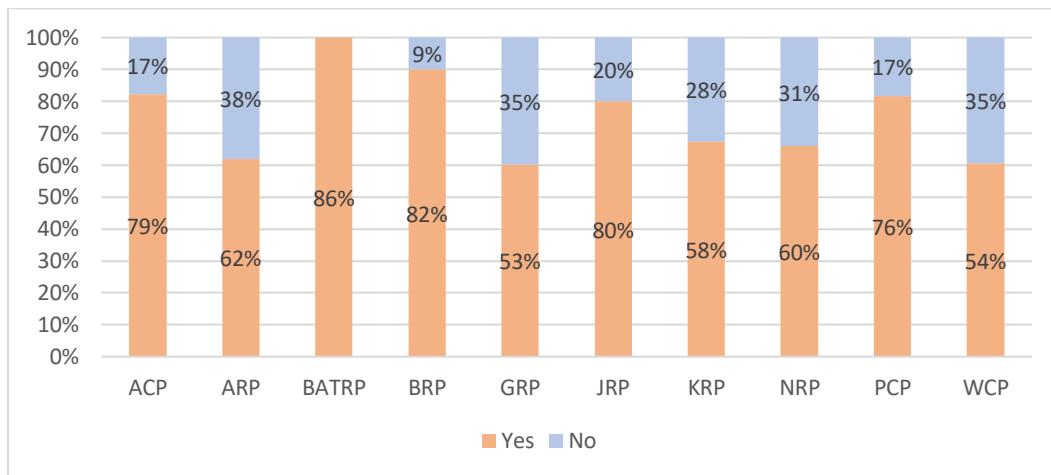
³⁵⁴ For a detailed discussion on the various measures used by prison authorities in disciplining inmates, please refer to chapter Discipline and Punishment.

³⁵⁵ Prisoner category under the study- Remandee, Convicted and Condemned.

³⁵⁶ For a detailed discussion on the living conditions of condemned prisoners, please refer chapter Prisoners on Death Row.

When prison officers were asked if they use violence against inmates, they informed the Commission that they rarely use physical violence and most often they would talk to the inmates and settle any dispute. For example, the Acting CJ of WWC said, "We hardly use the baton. They listen to us when we talk to them."³⁵⁷ However, inmates at WWC informed the Commission of alleged prison assaults by officers. The Commission also received two formal complaints of such alleged assault from inmates at WWC. Similarly, jailors, sergeants and guards have denied they verbally abuse or use abusive language when addressing prisoners. To the contrary, the SPs of most prisons acknowledged that the use of abusive language by prison officers against inmates is prevalent and a problem that needs to be addressed, with some stating that they have repeatedly instructed officers not to use abusive language.³⁵⁸

Graph 13.2 – Female respondents on whether prison officers treat them with dignity and respect



Female prisons usually have a small population of prisoners who are likely to maintain a good relationship with officers due to the low prisoner to officer ratio, and the work environment for female officers would also be relatively less stressful, which could be a reason why female prisoners feel they are treated with respect and dignity. This however, doesn't preclude women prisoners from being instructed to perform personal tasks for officers. As a convicted woman from ARP stated, "...even if there is enough water, we don't have time to bathe since we have to go do certain work as per the officers' requests. We would be asked by the Madam to polish their shoes or massage their heads. Therefore, it's difficult for us".

In every prison, prisoners mentioned there were some officers who treat prisoners with dignity. As prisoners described it:

³⁵⁷ For a detailed discussion, please refer to chapter Discipline and Punishment.

³⁵⁸ For a detailed discussion on the mechanisms by which inmates can complain about ill-treatment perpetrated by officers, please refer to chapter Grievance Mechanisms.

“Not everyone, only some of the officers. There are both types of officers here, those with love for human beings and those who do not. There are officers who are so familiar with inmates and have affection for them but some officers treat us like animals.”

Convicted, WCP

“There are good officers. There are officers like gold. Officers, who talk well, do other things and give food for us. There are officers like that. I am not going to tell their names because it is not good for them. There are evil officers among them.”

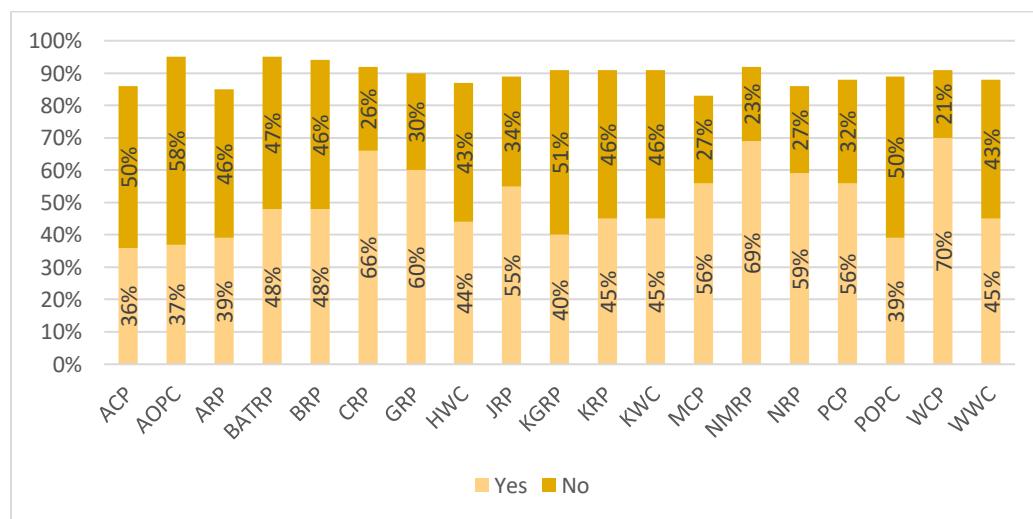
Convicted, ARP

3. Discrimination

The Commission observed different forms of discrimination within the prison system, with discrimination based on socio-economic standing, ethnicity, offence and religion being the most common. Such discrimination is also inherent in the legislative framework, for example, the classification of certain prisoners as ‘Star Class’ in the DSO³⁵⁹, which will be discussed in detail below.

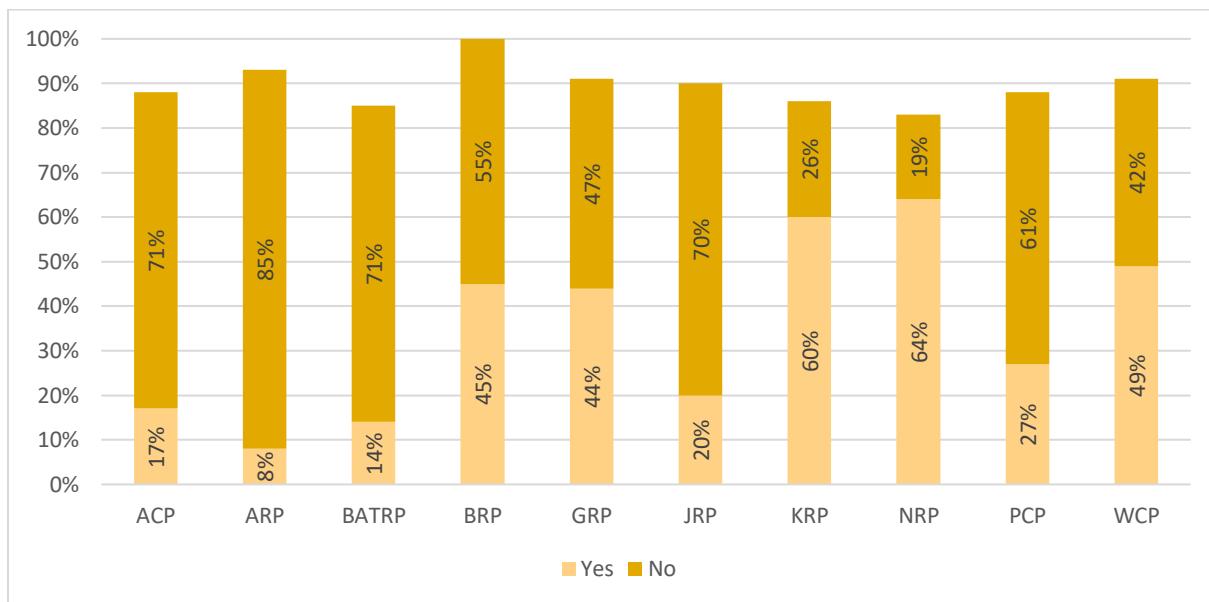
The quantitative data set out in graph 13.3 below illustrates that a large proportion of prisoners believe that officers favour some prisoners over others, with 70% at WCP, 69% at NMRP and 60% at GRP stating they feel there is discrimination and favouritism.

Graph 13.3 – Male respondents across prisons on whether they think prison officers favour some inmates over others



³⁵⁹ DSO 1956, s 408.

Graph 13.4 – Female respondents across prisons on whether they think prison officers favour some inmates over others



3.1. Socio-economic standing

"If I were rich, I could get whatever I want to eat. If you have money everything is better. You will even get more water to bathe but if you don't have money like me you will have to listen to everything they say. If you talk back even a little, they will use foul language. There is nothing you can do about it but the people who have money get all the facilities that they need. That is why if you are ever to come to prison, it is better to make a lot of money and then come in. You can lead a comfortable life. Only after coming here I learnt all this. When I was in Kandy I used to be scared to even walk near the prison. I used to think that this place is filled with murderers and bad people. Only after I came here, I learnt of the injustices happening here."

PTA Prisoner, WCP

The Commission's observations and individual narratives of prisoners revealed that the most common form of discrimination is based on one's economic standing, as expressed by an inmate from CRP who said, "They treat the inmates who have money well but treat others badly".

The discrimination is inherent in the legislation in Section 408 of the DSO on the 'Star Class' classification, which requires the segregation of a person whose 'education, character, social standing and conditions of life into which they were born and to which s/he is accustomed are such as to render segregation from the ordinary type of prisoner desirable in his morale

interests'.³⁶⁰ Prisoners who are deemed to be within this class can be given additional privileges, such as separate cells, special medical facilities and extended time before evening lock up, to which other ordinary remandee or convicted prisoners are not entitled.³⁶¹ Similarly, Section 196 of the SRs states that any remandee or civil prisoner, through the payment of a fee fixed by the SP, should be allowed a cell or room better equipped than a normal cell or ward. The concerned prisoner can also be allowed to procure such furniture and equipment as necessary for the cell, with the permission of the SP.³⁶²

International guidelines on the management of prisons require privileges to be afforded to persons displaying good behaviour in order to incentivize good conduct and encourage prisoners to uphold prison rules. This is highlighted in SMR 95, which states that 'systems of privileges appropriate for the different classes of prisoners and the different methods of treatment shall be established at every prison, in order to encourage good conduct'. When the functioning of a prison is such that persons can simply purchase special privileges, or special privileges are awarded to persons due to their social standing rather than their behaviour in prison, the incentive to restrict undesirable behaviour is reduced and the sense of unfairness felt by other prisoners, such as inmates from impoverished backgrounds who would be treated as inferior, increases. An inmate expressed this as follows:

"They don't speak properly at all. They speak in a discriminatory manner with some inmates, but they speak differently with inmates who are rich. They treat inmates like us differently to them (rich inmates)."

Remandee, CRP

It was found that economically prosperous inmates use their financial resources to obtain two types of privileges. One is by paying to obtain special privileges that enable the prisoner to maintain a lifestyle that at least minimally mirrors their pre-imprisonment lifestyle. Special treatment includes activities and benefits like private visits, access to better food than what is provided to ordinary inmates etc., which are discussed below. The other means by which prisoners can utilize their financial positions is by paying to possess contraband, such as phones, tobacco etc. For instance, a prisoner from MCP explained that, "If a top person is caught with a phone or tobacco they wouldn't be beaten, there is no transfer of ward, they remain in the same place, they just let them be. The poor are harassed a lot".

It was noted there are a handful of prisoners in every prison who are influential and wealthy, such as in KRP, PCP, WCP, BRP, and these persons used their influential social positions to obtain privileges in prison. Such prisoners who are at the dominant end of officer-inmate relationships may use their power to corrupt those tasked with ensuring their custody. These prisoners may use threats, intimidation, coercion or other forms of pressure to affect

³⁶⁰ ibid

³⁶¹ ibid ss 409, 412, 414.

³⁶² For a detailed discussion on the benefits enjoyed by certain classes of prisoners, please refer to chapter Accommodation.

the way in which officers behave and respond.³⁶³ The consequences of such acts, which can be observed in the little luxuries that these inmates enjoy every day, are discussed below.

Family visits

The families of influential prisoners are allowed to come inside prison and see them in person i.e. they are allowed to sit with their families in a separate room, unlike ordinary prisoners who are only allowed visits in the visit room, separated by barriers. As a remandee from KRP stated, "Now if a minister is remanded or a police officer is remanded, they don't have visits in the kind of places we have, with mesh. They are taken to a separate room for their visits".³⁶⁴ The Commission observed the existence of this practice in NMRP, KRP and WCP.

Sleeping arrangements/facilities

While most prisoners are crammed into cells and sleep "stacked like sardines" and "broiler chickens", which are common phrases used by inmates to describe their plight, it has been alleged that influential prisoners are given spacious areas in the ward or, in some instances, separate cells. Some influential inmates are also allowed to have mattresses, whereas ordinary prisoners sleep on the bare floor or on bed sheets, which was observed in MCP, GRP, WCP etc. When the Commission queried about this the prison administrations stated that the said prisoners were allowed to have mattresses only because the doctor prescribed it due to the particular medical conditions of these prisoners. Other common items that were observed in cells or wards that house privileged prisoners were lights and fans in individual cells and radios and TVs of better quality than observed in other cells. A convicted prisoner at ARP described a prisoner receiving such privileges as follows:

"He gets special treatment. There is a light in his cell. He is given a mattress. He gets all food. He is serving a life imprisonment. Normally, convicted people cannot get food (from outside). He gets all food which is brought to him, such as all food, certain protein and dates and all what he likes."

In BATRP, it was observed that D Ward which was one large room (288 sq. ft) housed only one remandee inmate, and had a flat screen TV, three big barrels to store water, a wall mounted fan, mats and pillows and some furniture. Next to it was the E Ward, which housed eleven remandee YOs under the age of nineteen. It had no fans, no pillows, inadequate mats and no TV. It was also noted that in the most congested wards at BATRP, an individual inmate only has 0.78 sq. ft of space. Further, it was observed in GRP E Special Ward that there were wall fans in each cell and the inmates had the cells painted according to their personal preferences. Similarly, CRP Cell M2 appeared like a private room with a wall fan, a ceiling fan and a makeshift water filter with neat racks to store personal belongings, including a range of fruits.³⁶⁵

³⁶³ Handbook on Anti- Corruption Measures in Prison 2017, p 14.

³⁶⁴ For a detailed discussion on family visits, please refer to chapter Contact with the Outside World.

³⁶⁵ For a detailed discussion on sleeping arrangements, please refer to chapter Accommodation.

Search/ Seizures

Inmates have stated that officers conduct regular searches of their wards and cells. During these searches, prisons stated that while ordinary inmates' belongings are thrown on the ground and searched, the influential inmates' belongings are left untouched, even if the officers are aware that they are in possession of contraband.

Food

Like all remandees, influential and wealthy inmates are able to receive food via visitors. It was alleged that the difference is that the food is not checked, unlike the food received by other inmates. Some prisoners in BRP for instance had unopened biscuit packets in their wards, bread etc., whereas it is often common practice during food checking to remove biscuits from the packaging and place them in plastic or paper bags. During inspections, the Commission noted that influential prisoners were allowed to stock more food than other prisoners were allowed, i.e. they were allowed to retain large quantities of food received via visits in their cells. As stated above, a couple of prisoners in BRP were observed to have in their wards any amount of food they wanted. In PCP, it was noted that a particular prisoner was allowed to retain stocks of provisions like pickles and whey protein. Further, in a specific instance, it was noted by the Commission that the officers at the WCP PH do not check the items brought during visit thoroughly, and influential prisoners who were admitted at WCP PH receive large amounts of personal provisions that other prisoners are not allowed to receive.

These allegations demonstrate that the preferential treatment and privileges offered to persons of influence in prison, with the abetment of prison officers, can create space for persons to engage in criminal activities from within the prison. This becomes especially problematic when the prevention of criminal activities is used as an umbrella excuse to justify practices of the prison staff, which infringe upon the rights of prisoners, such as destructive raids of prison cells, degrading body searches and even physical violence. It is prisoners who would have to bear the brunt of this action, while the fact that criminal activities cannot take place within the prison without the co-operation and acquiescence of prison officers remains unaddressed.

3.2. Race/ethnicity

It was observed that most complaints about ethnic discrimination were made by Tamil inmates who were in prisons that predominantly housed Sinhala prisoners. The inmates described it thus:

"Tamil speaking inmates are always considered second when it comes to ARP. When we report about issues, such as water related problems or any

inadequacy in the facilities, the guards hardly pay attention and mostly ignore our complaints.”

Remandee, ARP

“Yeah on visit days they ask us what is my case and when I tell it is PTA, they will reduce the number of items my mother brings and send them back for reasons that do not seem justified. When we get an open visit, I ask my mother to bring extra food and even then, they send the food back just for the sole reason that I am Tamil.”

Remandee, NMRP

“The Welfare madam does not help us because we are Tamil. She only helps the Sinhala inmates. We haven’t even got a piece of soap from the Welfare office. We get all of them when my daughter visits me or when I go to Colombo. We are in for twelve years; how can we manage? There is discrimination with regard to food. If there are extra bananas or eggs remaining, they always give it to the Sinhala people. Sinhala people always get special treatment. Once an officer scolded the Tamil people and another inmate spoke up saying why do you discriminate us? From that day onwards they do not scold us.”

Convicted, PCP

The Commission was told by Tamil prisoners of the use of verbal harassment accentuated by racial slurs by both officers and inmates. This is also exacerbated by the language gap that exists between the officers and the Tamil inmates because most often the Tamil inmates are unable to explain themselves or understand what is being said to them. As a result, Tamil prisoners are discouraged from reporting grievances to prison officers.

Discrimination against Tamil inmates was also reported by female prisoners. For instance, Tamil inmates in the female section of KRP mentioned that officers would never select them to participate in cultural activities, such as plays and dances. The discrimination that Tamil prisoners experienced was pointed out by foreign detainees, with a female inmate from NRP explaining it thus:

“We spoke about the Tamil people, right? They are not nice to them. It’s not good you know. One lady was here with her daughter who was born in Germany. So, she was a Tamil but German. First, this lady spoke German and Tamil but the officers usually don’t speak Tamil language, 90% of the officers don’t speak Tamil. And this girl, firstly she was young, she was only sixteen years old, she was here with the mother. She tried to protect her mother, they started to beat them, and beat them like, kicked them and jumped on them. I took the girl and took her to the side and she was shaking so much because she was scared, she didn’t understand what was happening. But seriously, as a foreigner, I see they don’t treat the Tamil people well”.

The Commission found that while foreigners by large are treated better than local prisoners, particularly where the use of violence is concerned, they too complained of racial

discrimination, especially African inmates. Nigerian inmates stated that prison authorities regularly disregard their complaints and often call them names based on their colour and offence. It was also observed that due to the language barrier, these persons are more prone to humiliation and ridicule. For example, a Nigerian prisoner in CRP said, "Sometimes they favour the local people more than us. They (officers) will not listen to anything we say. Even if the other Sri Lankan inmates treat us badly and we complain to the officers about it, they will just ignore it".³⁶⁶

3.3. Religion

Complaints of discrimination based on religion were mostly made by Muslim inmates who reported that officers spoke to them in an offensive manner, often targeting their religious beliefs, and belittled them for their religious practices. A prisoner at BRP stated that, "They talk in a racist manner. Since I always wear a skull cap and have a beard, they create a racially charged environment here. They would call me *Thambyia* and *Ambiya*. Then they would say they will remove each and every hair". Prisoners felt that even if officers do not overtly display their biases, it can still be inferred in the decisions they make. As stated by a prisoner at BATRP, "There's a person here called AB. He's a jailor. He's here to check the ethnicity. He's a racist. If someone is Muslim, he's different and if someone is Sinhala then he's his friend". It was observed that most prisons such as PCP, POPC, BRP, KRP, BATRP and GRP allocated separate wards for Muslim inmates during the period of Ramadan, provided them food at night and allowed Friday evening communal prayers.

Generally, discrimination, ill-treatment or deprivation on the basis of ethnicity, race or religion, will spark indignation and anger amongst prisoners and create the impression amongst other prisoners that inmates of a certain religion or ethnicity are open to be abused without repercussions. It will also adversely impact the maintenance of order in the prison. In particular, in a society where religious observances are integral to an individual's identity, the denigration of persons for their religious beliefs or preventing them from observing their religious practices exacerbates the deprivations to which they are already subjected in prison. Further, it could also adversely impact the post-release conduct of prisoners and potentially undermine the objectives of imprisonment.

3.4. Offence

Officers reportedly discriminate against inmates who are in prison for minor drug related offences, and offences such as rape and sexual harassment. With respect to prisoners who are in prison on drug related offences, it was observed that generally it is prisoners from impoverished backgrounds who were arrested for being in possession of small quantities of drugs, who were subject to discrimination in prison, while it was reported that prisoners known to be drug dealers and traffickers are not subject to such discriminatory treatment. Those in prison for drug related offences were regularly searched and all their belongings

³⁶⁶ For a detailed discussion on treatment of foreign prisoners, please refer to chapter Foreign Nationals.

seized during the search irrespective of whether they are actually in possession of drugs. An inmate in GRP said that officers often beat inmates during searches and make them kneel down, to force them to give up the drugs thought to be in their possession, even when they don't have any in their possession. Those in prison for drug related offences were said to be looked down upon and not provided adequate support for rehabilitation. The Commission was specifically told of instances when inmates who are in prison for sexual assault and similar offences were beaten by the officers of the RC Branch on the day of registration.³⁶⁷ It was also noted that in the WCP Female Section, those in the punishment section for allegedly violating prison rules were inmates who were in prison for either drug related offences or solicitation.

PTA prisoners is another group that mentioned being discriminated due to their offence, including the manner in which they are categorized in prison, whereby even the unconvicted persons detained under the PTA are labelled as LTTE. In all prisons visited it was noted that the morning unlock sheet categorizes persons remanded under the PTA as "LTTE" rather than as PTA remandees. Even wards in prisons where the PTA inmates are held are referred to as LTTE wards.

The use of the term 'LTTE' to refer to PTA detainees results in stigmatizing them, thereby leading to their social isolation in prison. This alienation is normalized when prison staff also refer to them as LTTE. As a result, many PTA prisoners often request to be housed with other PTA prisoners or in prisons where PTA prisoners are held, because they are concerned about possible harassment and abuse by other prisoners, and find it challenging to integrate with other inmates within such a context.³⁶⁸ They further stated they have an underlying fear of being subject to violence due to similar incidents that took place in the past in many prisons. As a prisoner from ARP stated:

"I felt scared to be in a cell. I will never receive any help if someone tries to harm me when I am in a cell. Prison guards won't bother about our security. The Sinhala speaking persons here do not respect the Muslims or Tamils here. Even when we complain to the guards saying that we are being beaten or threatened by the Sinhala speaking inmates, the guards ignore our complaints."

Another PTA prisoner expressed his experiences thus:

"There are lots of people here who call me XXX³⁶⁹, I scold them back saying I have a name and to call me by that. You have killed your wife; shall I call you a wife killer? There's so much racism here. I have endured all that. Earlier [when in remand] I was in a separate cell with the PTA prisoners. Only after I was convicted, I was housed with the other prisoners. It will be easier for me if they

³⁶⁷ For a detailed discussion, please refer to chapter Discipline and Punishment.

³⁶⁸ For a detailed discussion on accommodation conditions of PTA prisoners, please refer to chapter Prisoners held under the Prevention of Terrorism Act.

³⁶⁹ Withheld to protect the identity of the interviewee.

put me in Dumbara [PCP] with the political prisoners. If I am here, I have to listen to everything they say. Even when I go to bathe, if other people get ten buckets, I will only get five buckets. I can't even talk back to them. I've been affected like that."

PTA Prisoner, WCP

PTA prisoners also complained to the Commission that they were housed with mentally ill patients in bare cells at the WCP PH, citing reasons such as the need for high security, and the lack of officers to position inside wards. This complaint was addressed after the Commission raised it with the prison authorities concerned.

It is important to highlight SMR 5, which states 'the prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the respect due to their dignity as human beings'. As per SMR 5, it can be argued that all prisoners are entitled to what is deemed 'special privileges' in the Sri Lankan context, such as decent quality food and visitation, without being forced to offer financial considerations. The feelings of injustice and unfairness due to discrimination, particularly by a population that is already suffering several deprivations that adversely impact their psychological well-being, could even trigger rebellious tendencies amongst prisoners. Thus, the well-being of the prisoner population and the maintenance of order in prison are compromised when privileges can be bought by prisoners, rather than earned as reward for good behaviour. Moreover, differential treatment based on one's ethnicity, social standing or offence undermines the rehabilitative purpose of the correctional system.

4. Inmate-inmate relationship

This section will set out the conflicts that exist between prisoners and the way in which prison officers deal or fail to deal with such conflicts, as it has an impact on prisoner well-being as well as the maintenance of order in prison.

Prisoners have stated that in an environment in which there are persons from varied ethnicities, religions and socio-economic backgrounds, it is common for conflicts to occur between inmates. Even though prisoners appear to resolve the majority of such conflicts themselves, there seems to exist a certain level of discrimination by prisoners of other prisoners. Similar to what was stated about officer-inmate relationship, grievances regarding discrimination and racial ill treatment were mostly recorded from Tamil, foreign and Muslim inmates, while the issue of privileges enjoyed by influential inmates, unchecked by officers, was raised by all prisoners. As described by an inmate at GRP, "It exists between the inmates in the room. There's a differentiation as Tamils and Sinhalese. Sinhala inmates have told Tamil ones that, all of you are LTTE". Inter-inmate conflicts surrounding religion were also reported by female inmates. As stated by one remandee from NRP:

"The Muslim prisoners were coming to the church as XXX was teaching them English there, and she was teaching the Muslims as well. It's not a big problem, it's not a big issue, but some ladies had a problem with Muslims coming inside

the church. What stupidity it is! They created a problem and then “Chief Madam” listened to them and wanted to close the door of the Church, but I said you will not close the door of the Church because it is the house of God and has to be open and I sat in the middle of the door all day. (laughs)”

A foreign inmate at CRP said, “We were in G ward before but the racism of the Sri Lankans in the ward... they’re treating us as nobodies and the officers are doing nothing about it”. In prisons which held a large group of foreigners, foreign inmates were often found complaining about the local prisoners in their wards, and due to the number of conflicts which occurred between the two groups, foreign prisoners often requested an exclusive ward for foreigners.

Another form of discrimination and resultant ill treatment is between new comers and inmates serving long sentences. New prisoners stated they were not given proper places to sleep, and were forced to do the bidding of longer serving inmates. This is a uniform complaint received from prisoners across all prisons. Most new inmates are not given a place to sleep near a border and are often made to sleep near the toilets or the footpath in the ward. In some cases where multiple inmates share a cell, the newcomer is made to clean the toilet bucket every morning, which is used by all the inmates in the cell.³⁷⁰ As described by an inmate at KWC, “It depends on how long you have been in the prison. Now when a new person comes to prison, the officer will ask us to get the work done by the new person”. A convicted prisoner from HWC brought to the Commission’s attention the futility of making complaints against some prisoners who have served longer sentences in a particular prison and maintain close relationships with the officers:

“There is no use complaining against some prisoners. Even if we complain the officers will support the prisoners who have been here a long time.”

Reports of discrimination by kamara parties who are ward leaders chosen from amongst prisoners were also received. Kamara parties are normally chosen by the prison administration on the grounds of being the longest inhabitant of the ward and they are also persons who have a close relationship with the jailors and guards. A prisoner at BATRP said, “The officers treat certain inmates as ‘important inmates.’ If those inmates say anything bad about us, then the officers hit us. If they wanted to transfer us, then they will transfer us to a different ward. If they wanted to put an escort (transfer to a different prison), then they do so.” An inmate from NRP explained a kamara party as follows:

“Say that something happens in a ward like something wrong/illegal. Those wrong/illegal things are reported to the authorities. When they report such things, they [the officers] get a good impression of that man [inmate]. With that good impression he is appointed [as the ward leader]. That means, the inmate who tells the most tales is made the ward leader.”

³⁷⁰ For a detailed discussion on the issues faced by new entrants to prison in relation to accommodation, please refer to chapter Accommodation.

A grievance, uniformly recorded from inmates is the privileges kamara parties enjoy in comparison to the other inmates, which is allowed by the prison authorities. It was said that kamara parties also regularly complain about inmates with whom they might have conflicts, to prison officers and get them transferred to other wards. "There is special treatment for kamara party, compared to the rest of the inmates. For example, even though we do not do anything to him, if kamara party does not like an inmate who is in his ward, then he gives the inmate's number to the ASP as someone who has committed an offence. After that, the ASP calls that inmate, beats him up and transfers him to another ward," said an inmate at ACP. In GRP, a prisoner said the toilets in the ward were only used by the kamara party and the prisoners he favoured.

It was noted that as a common practice, the kamara party of each ward/cell has the responsibility of assigning places to people places to sleep. The Commission observed that a unique system of borders existed, whereby prisoners in PCP, KRP, CRP, NMRP, WCP, KGRP, JRP and ARP stated that those who wish to sleep near the wall have to transfer money through eZ Cash to the kamara party via a phone number that the kamara party provides the prisoner. Once the kamara party receives confirmation of such transfer, then s/he provides the concerned inmate with a spot near the wall to sleep. The amount for which such spaces were sold varied from prison to prison but the range, based on the narratives of prisoners, appears to be Rs. 2000 to Rs. 5000 for a spot near the wall. Inmates who are unable to pay this amount are made to sleep near the bathroom or on the foot path. This was explained by an inmate who said, "There is something called the 'border' in prison; it means a place closer to the wall where we can use the mat and sleep. They are selling this border for an amount like Rs. 2000 or Rs. 3000 via eZ Cash".³⁷¹ Kamara parties were also said to provide special privileges to those inmates who are wealthy and influential, such as allowing them to pick their preferred place to sleep.

It was observed and reported to the Commission that inter-inmate discriminatory behaviour was ignored by prison officers even if prisoners complained, and in certain cases, it is even encouraged, such as in the case of kamara parties. This creates an imbalance of power within the prisoner population separating those who are subjected to discriminatory treatment and the group of prisoners who enjoy the protection of prison authorities. Not only does this adversely impact the security of prison wards, but also causes certain groups to become more vulnerable in prison.

5. Allegations of corruption

'Corruption is the misuse of entrusted power for an undue advantage. Many acts of corruption in prison revolve around the treatment and conditions of prisoners. Corruption is more than just bribery. However, bribery might be the most prevalent or obvious form of corruption seen in prison. The other ways corruption manifests, is when officers, facilitate smuggling of contraband into

³⁷¹ For a detailed discussion on sleeping arrangements, please refer to chapter Accommodation.

prisons, decide the quality of accommodation, relax enforceable law and in the progression of home leave.³⁷²

This section examines the allegations made by prisoners against prison officers reportedly engaging in corrupt practices and abuse of authority. While the allegations remain unverified, the fact that similar allegations were reported from prisoners held around the country is an indication that these issues require an independent investigation and action should be taken by the DOP based on the findings of such investigation.

Sections 236 to 238 of the SRs mention the prohibited articles that are restricted in prison. Further, Sections 131, 133, 155(4) of the SRs and Section 202(ix) of the DSO specifically prohibit prison officers from bringing contraband to prisons, doing business with or on behalf of a prisoner and receiving consideration of any form. Additionally, Circular 12/2015 states that when an officer is found with any prohibited articles s/he will be suspended, a charge sheet filed and the officer terminated from service if the inquiry confirms that the officer had brought contraband into prison.

Of the total study sample, 31% of male respondents and 24% of female respondents stated prison officers in the prison at which they are housed accept bribes.

Table 13.1 – Male respondents on whether prison officers accept bribes at the prison in which they were housed

Prison	Do officers accept bribes in this prison?	
	Yes	No
ACP	23%	58%
AOPC	18%	76%
ARP	12%	67%
BATRP	37%	55%
BRP	27%	65%
CRP	47%	38%
GRP	33%	48%
HWC	14%	72%
JRP	29%	11%
KEGRP	32%	59%

³⁷² Handbook on Anti- Corruption Measures in Prison 2017, p 14.

KRP	28%	50%
KRP	10%	74%
MCP	29%	49%
NMRP	60%	30%
NRP	51%	29%
PCP	40%	42%
POPC	20%	65%
WCP	64%	22%
WWC	16%	64%

It should be noted that the highest positive responses were from the three prisons in Colombo 64% at WCP, 60% at NMRP and 47% at CRP, and 51% at NRP.

Table 13.2 – Female respondents on whether prison officers accept bribes in the prison in which they were housed

Prison	Do officers accept bribes in this prison?	
	Yes	No
ACP	17%	71%
ARP	8%	85%
BATRP	14%	71%
BRP	45%	55%
GRP	44%	47%
JRP	20%	70%
KRP	19%	47%
NRP	64%	19%
PCP	27%	61%
WCP	49%	42%

A similar pattern is found in the responses of the female respondents with NRP being the highest with 64%, followed by WCP with 49%.

Prisoners said that officers are willing to bring phones, drugs and other contraband into prison for monetary compensation and charged exorbitant amounts for them. For example, an inmate said a Nokia phone that would normally be priced at Rs. 1500-Rs. 2000 outside, would be sold for Rs. 40,000 inside the prison. As a former inmate from PCP stated, "a dumkola/tobacco is Rs. 3,500 inside (prison), which they cut into little pieces and sell one piece for Rs. 1,200, and earn like Rs. 15,000 from one sheet of tobacco". The kamara parties allegedly support the corruption as described by a prisoner at KGRP thus:

"X sir and Y sir get help from kamara party. Those kamara parties are trying to create a mentality that, "if you give money, then you can have a good life in here". After that, kamara party helps that man inform the family. They give mobile phones to make a call and they try to settle the matter. Finally, that person's family brings money and they give it to officers during the visit. They do not allow these people (families of prisoners) to deposit that money into the account. They take it only by hand."

Further it was said, that the common practice was for the family to transfer eZ Cash to the concerned officer who in turn would deliver the goods to the inmate. Inmates have informed the Commission that although it is the officers who bring prohibited items into prison, it is they who confiscate the contraband during searches which was described by inmates as follows:

"This officer's name is X. He is the in-charge of this SM Branch. The other one, his name is Y. The two of them do these illegal things. They hit people for small things. One of their officers will come and give a piece of tobacco himself and then they will catch it themselves and then they hit you. They ask, "who gave it? which officer gave? why did you take it? what's the reason?" They are the ones who bring it and then they hit us, and then change our cells."

Remandee, MCP

"There are people who use phones, he is definitely taking money from them. At least once a week he is taking Rs. 3,000 or Rs. 4,000. If they do not give that money, then a search is conducted and consequently the phone will be taken. Then he again brings that phone. He takes Rs. 15,000 or Rs. 20,000 to bring a phone inside. That is what he does. He is the only person who does that."

Convicted, KRP

Prisoners overwhelmingly informed the Commission, while alluding to the supply of contraband available in prison, that smuggling of unauthorized items into prison is only possible due to the assistance provided by prison officers as they have access to the outside world (unlike prisoners,) and are not subject to stringent search procedures as prisoners. This was corroborated by SPs in BRP, ARP, BATRP, NMRP, WCP, and even senior officers stationed at the DOP Headquarters who stated these were regular occurrences and said that there have been instances when officers have been suspended and transferred when found with contraband. The officers described the circulation of contraband thus:

“When they know the officers, they pass messages and throw contraband (into the prison).”

Female Guard, WCP

“We have caught officers who smuggle phones and drugs. We have interdicted them.”

CJ, WCP

“We haven’t caught any yet but we know they are involved in it. They can’t bring this inside prison without the help of the officers.”

Staff Sergeant, BATRP

“We find drugs during visits and some jailors smuggle them inside as well.”

Guard, JRP

“We do get regular complaints. Most of the complaints are about how the jailers are aiding in carrying drugs for the inmates. We have also heard that some prison officials do drug and phone business. We do try to find who they are, complain about them to the head office and get them transferred from this prison. We do check them every day when they enter and leave the prison, but they sometimes conceal it in places that we cannot check. If we know for sure, we could body search them but most often it’s only a suspicion and we can’t act on it.”

SP, BATRP

Circular 23/2013 states that all officers and their belongings should be inspected by the guard at the gate before they enter prison. SPs have also stated that even though there are preventive measures, like checking every officer before they enter prison in place, smuggling contraband into prison continues to occur. As stated by the Acting CJ at KGRP, “We search all officers at the iron gate, including me”. The stringent measures and policies introduced by the administration to counter the spread of contraband would be rendered ineffective if the part played by officers in the supply chain is not disrupted. While prisoners may suffer extended sentences when caught possessing contraband, if safeguards are not in place to monitor officers for the same offences, there exists an unequal application of the law, which undermines prison and prisoner security.

Inmates have also mentioned instances of prison officers asking them to deposit money for family weddings, travel, personal emergency etc. “Suppose I’m an officer. If someone sends eZ Cash to me from your phone, no one would know from where the transaction happened. Then the officer would draw the money by inserting the PIN number from a Commercial Bank ATM outside,” said an inmate in PCP.

Though corruption was a common issue raised in all prisons, inmates in JRP specifically informed the Commission that everything in their wards was bought by bribing the officials. They stated that the televisions, cable channels, fans, brooms and brushes for cleaning the

wards were all bought by the prisoners through each prisoner contributing money. The families of the inmates buy the necessary items and provide it to the prison as a donation with the permission of the SP to allow inmates to install and use these items. Further, the inmates stated that in addition to paying for these items with their own funds, they would also have to bribe the officers to install and use these items.

Inmates who admitted to bribing the officers stated that the officers do it because their salaries are severely inadequate and they need a different source of income to support themselves, particularly given the stressful environment within which they work and the long hours of work.³⁷³ The SP of KRP echoed these sentiments and stated, "Officers are paid very little compared to the risk, stress and responsibility of the job. That's why it's easier for a wealthy prisoner or an underworld prisoner to tell an officer, 'I will help you if you bring me this and that.' It's human nature. For officers with wives and children, how can they raise them with this small income?". This points to the fact that structural and systemic issues, such as poor salaries, need to also be addressed to tackle corruption successfully.

6. General observations

The Commission noted that the relationship between officers and prisoners is often shaped by an inmate's offence, social status, ethnicity, religion, race etc. and it is often observed that officers do not equally treat all prisoners with respect and dignity. Further, inmates who were favoured by officers were found to enjoy certain privileges, which are usually not available to others. These privileges, as observed, were in the form of access to better family visits spaces, sleeping arrangements and food as well as lenient search procedures.

Discrimination among inmates, based on race; religion etc. also takes place and this was especially observed in the case of Tamil and foreign inmates. Further, the Commission observed that kamara parties enjoy privileges and powers that were not available to other prisoners and inmates who have been in prison longer were found to have a much better relationship with the officers.

The Commission was also made aware of the underlying corruption in prisons, whereby officers were said to accept bribes to provide certain benefits to prisoners. The overall observation is that the correctional system as it currently exists, fails to foster an environment in which officers and inmates can have a functional relationship with each other that enables the achievement of the ultimate purpose of incarceration, i.e. rehabilitation. The room for differential treatment and corruption is also created when all prisoners do not receive the minimum standards of treatment to which they are entitled. As a result of this, adequate sleeping space, better conditions for family visits and access to better food become commodities that must be purchased in prison.

³⁷³ For a detailed discussion on staff salaries and allowances and the resultant impact on officers, please refer to chapter Challenges Faced by the Prison Administration.

14. Discipline and Punishment

"Only some officers are violent. I don't think they beat you for fun. They beat for some reason like when you fight with others, when you are found with tobacco, if you don't listen to them, if you don't follow orders, if you are acting too smart. When they start beating, it's like they can't stop".

Remandee, CRP

1. Introduction

The SMRs³⁷⁴ and the UN Convention Against Torture prohibit conduct and sanctions which amount to torture, cruel, inhuman and degrading treatment and punishment inflicted by officials of the State on persons held in detention. SMR 82(1) prohibits the use of force by officers on inmates, 'except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations' and the force used must be no more than is strictly necessary and should be reported to the superior officer. SMR 39 states that punishment for disciplinary offences must be proportionate to the offence committed.

Freedom from torture is also guaranteed by Article 11 of the Constitution of Sri Lanka. According to section 4 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994, any person who attempts to commit, aids and abets to commit or conspires to commit torture, shall on conviction after trial by the High Court be punishable with imprisonment between seven to ten years and a fine between Rs. 10,000 and Rs. 50,000. Furthermore, the said Act identifies torture as a cognizable offence and a non-bailable offence.

The PO, which was adopted in 1878 and last amended in 2005 and is the primary source of legislation relating to the administration of prisons, allows the use of reasonable force by prison officers to compel the prisoner to follow lawful orders.³⁷⁵ However, there are no guidelines to determine what constitutes 'reasonable' force, and how it may be utilized in a manner that is necessary and proportionate. Nor are there any legal safeguards to prevent a prison officer from applying force arbitrarily, such as requiring instances of use of force to be reported to a senior officer, as enshrined in SMR 82. Following the 2005 amendment of the PO, the sections that permitted the use of corporal punishment as a disciplinary sanction were repealed. However, prison officers have often stated to the Commission that the PO permits the use of violence as punishment.

A recent development in the form of Circular 10/2018 issued by the CGP in 2018, requires all SPs to prevent prisoners from being assaulted by prison officers. The CGP mentions that assaulting prisoners is unethical, in violation of the human rights of prisoners and amounts to an offence under section 310 of the Penal Code (causing hurt). However, it must be noted

³⁷⁴ SMR 2015, r 43 – 45.

³⁷⁵ PO No.16 of 1877, s 13.

that the circular does not refer to Article 11 of the Constitution that says 'No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment' nor the Convention Against Torture Act 1994 which criminalizes torture.

The SM Branch of each prison is primarily responsible for maintaining discipline in the prison and meting out punishment for wrongdoing.

2. The maintenance of order through the use of violence

One of the ways in which the complete security of a prison is ensured is by fortifying the 'dynamic security' of prisons.³⁷⁶ Dynamic security consists of staff awareness and up to date knowledge of the goings-on in prison; how well an officer knows an inmate and how s/he supervises him/her; positive inmate-officer relationship; fair treatment of prisoners by officers and the effective engagement of prisoners in constructive and purposeful activities in prison. It is vital that the prison authorities give importance to inmate-officer relationships to foster a healthy environment for the inmates and maintain discipline within the prison. When these elements are not present then officers would likely encounter challenges maintaining order within prison, which in turn would result in the use of methods such as violence to maintain order.

Inflicting force on prisoners other than in instances which require it, such as when they are violent, or in self-defence, which is lawful and subject to the parameters of necessity and proportionality, would amount to torture, cruel, inhuman and degrading punishment and treatment, which is prohibited universally in international law and by the Constitution of Sri Lanka.

The Commission observed that prison officers perceive the use of violence as the primary means of maintaining order. This results in the use of violence becoming an entrenched facet of prison discipline and violence begins to be viewed as justified.³⁷⁷ A sense of impunity created by the power disparity between inmates and officers results in the abuse of such power, and is a discernible element in the use of violence as illustrated by the following narratives of prisoners:³⁷⁸

"You know, the guards come and somebody is giving him a massage, somebody is polishing his shoes, someone is cutting his hair. These kinds of services they are providing them, and when somebody refuses, they definitely hit him."

Male Remandee, CRP

³⁷⁶ Handbook on Anti- Corruption Measures in Prison 2017, p 13, The overall security of prisons is made up of procedural security (the routines, processes and the procedures to manage prisoners inside the prison), physical security (architecture and equipment required to safeguard prisoners) and dynamic security (Inmate and officer relationships).

³⁷⁷ For a detailed discussion, please refer chapter The Continuum of Violence.

³⁷⁸ For a detailed discussion, please refer the chapters Inmate – Officer Relationship and The Continuum of Violence.

"So, once an old man and an officer were coming down the staircase and the old man was ahead of the officer. This officer slapped the old man, saying the old man, knowing the officer was coming, didn't give way to the officer to walk ahead."

Male Remandee, BATRP

"They will make you walk on your knees on top of the stones. They will make us do squats and laugh at us. It's fun for them to make us do that."

Convicted Male, JRP

Prison officers often stated to the Commission that physical or corporal punishment is permitted under the PO, displaying the lack of awareness of prison officers of the Constitutional prohibition on torture and relevant domestic legislation and penalties, which criminalizes the same.³⁷⁹ The deficit in legal knowledge is worsened by the lack of training prison officers receive on the use of force in a manner that complies with standards of necessity and proportionality. This results in the use of force being perceived as equivalent to the use of corporal punishment, which is considered acceptable to maintaining order in the prison.

The lack of training on the use of force is a serious shortcoming, as newly recruited officers are issued a baton as part of their uniform, without strict guidelines on how to utilize them. Moreover, the use of violence becomes normalized when prisoners do not have a safe and confidential channel to report assault inflicted by officers, and officers are not held accountable.³⁸⁰ This, coupled with the failure of senior officers to denounce physical violence, creates and sustains the belief amongst staff that violence is an acceptable means to maintain order. This, in turn, results in entities such as the Commission, who inquire into complaints and condemn the use of violence, being viewed as impediments to the maintenance of order in prison. For instance, prison officers stated to the Commission, sometimes half-jokingly and sometimes as a complaint, that due to the Commission's regular visits as part of the prison study, they were unable to "maintain order" within prison because of the fear that the prisoners would complain to the Commission, thereby alluding that the presence of the Commission prevented them from using violence. Prisoners mentioned that frequent prison visits by the Commission reportedly curb the level of violence, and have called for the establishment of a permanent office of the Commission inside each prison.

The other side of the argument, as explained by the CJ of NMRP, is that prisoners may exploit external grievance mechanisms by making false claims. He highlighted an example of a prisoner lying to a judge about being harassed by a prison officer, to prevent the prison officer from taking action when the prisoner in question was found with contraband, as well as to prevent future searches in his ward for contraband. As a consequence of the judge

³⁷⁹ The Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment Act (No. 22. of 1994)

³⁸⁰ For a detailed discussion, please refer chapter Grievance Mechanisms.

admonishing the prison officer, the CJ and the SP advised the prison officer to completely avoid the area where the prisoner was held. Due to the shortage of officers, there was no officer to replace him, and thus, inmates of this ward were not being monitored and were free to engage in transgressions. The CJ claimed this particular prison officer was one of the most trustworthy officers at the SM branch and highlighted that prisoners may make false claims of harassment.

Although the use of violence to maintain order cannot be justified under any circumstances, both prison officers and prisoners stated that the working conditions, stress, burnout and job dissatisfaction found amongst prison officers are contributing factors to the way in which prisoners are treated by prison officers.³⁸¹ A prisoner described it to the Commission thus, ‘There are some officers who have problems at home. They would bring the home problems here. They come here and let it out’. An officer from the Officer Welfare Department of the DOP³⁸² responded similarly when asked why he thought prison officers use violence or abusive language:

“There is no mental relief. We are constantly burdened with issues at the prison, what the society tells us, issues with transfers, disciplinary actions, issues with our families – our children, our wives. Then we go and see a prisoner smoking tobacco or someone loitering in an area they are not supposed to or get to know someone has a phone. There isn’t even time to think before we act, before we lash out – sometimes it becomes almost the primary reaction.”

2.1. Instances of the use of violence to maintain discipline and control

Assault upon admission

Pre-trial detainees from four remand prisons and one closed prison stated they were beaten upon admission, as is the practice in the prison in the case of new remandees, allegedly termed the “welcome slap”. According to the interviewees, “welcome slaps” are conferred upon all new offenders in three institutions, while the other two prisons practice this only in relation to those remanded for drug related offences. Recidivist prisoners are reportedly subject to dunking for returning to prison at PCP. The female section of one remand prison also implements the practice of asking those remanded for drug related offences to kneel while they are beaten as part of the admission process. Prisoners from different prisons described it thus:

“But it’s like this, after you come in through the gate, they hit everyone...doesn’t matter what your offence is. They only let you inside after hitting once or twice. But if someone calls there and asks not to beat a

³⁸¹ For a detailed discussion, please refer chapter Challenges faced by the Prison Administration.

³⁸² For a detailed discussion on officers’ grievances, please refer the chapter Challenges faced by the Prison Administration.

particular person...they don't hit that particular person. Say if I know an officer here, from my village, who works in the prison."

Male Remandee, NRP

"We need to be careful with the words that we use. Otherwise they beat. Even the new ones are beaten. There are two or three officers, who ask prisoners whether they are new and then beat them. They beat. There are two or three officers like that. Everyone is not like that."

Male Convicted, ACP

"They checked me and hit me twice soon after I came. Sir hit me saying that it is a 'welcome slap'. That is, they beat when a person comes to the prison for the first time with a big guava stick. He hit me two to three times using that."

Male Remandee, BRP

It was observed that by assaulting prisoners during admission, the prison officers demean and disempower prisoners upon their admission to prison itself, thereby ensuring that they would become disinclined from disrupting order in the prison for fear of further violence. Those who are charged with or convicted of drug or sex offences, who often face worse treatment than others in prison, even at the hands of other prisoners, are singled out as they are perceived as troublemakers, and therefore assaulted as a form of prior warning.

Use of violence in response to inconsequential acts deemed transgressions

While some interviewees felt the level of violence imposed on inmates was justified because of the offences committed by prisoners in prison, an equal number of interviewees alluded that beatings are frequently administered for seemingly inconsequential reasons. Prisoners described it thus:

"For small wrongs they beat us. Such as, we cannot go anywhere outside from the ward. We cannot go to kitchen and sit. We cannot go outside and sit under a tree. They told me that if I walk from my ward, Young Offender ward to the kitchen, then they are going to break my legs and lock me in the punishment cell".

Male Remandee, CRP

"For example, officers tell us to form a line in the morning, if someone was sleeping at the time that they call us, and if he comes while wearing his shirt on the way, then officers take him aside and hit with a stick, leaving marks on the back".

Male Remandee, ACP

"Even this morning they hit one lady. She was late for polling. She was in the bathroom then, so they hit her."

Female Remandee, JRP

"But it is different in Mahara. They will beat you even before you do something wrong. For them, it is regardless that we have done something wrong or not. They severely beat beat beat beat beat you. At that point when someone cannot bear it anymore, they involuntarily accept the fault saying yes sir I did drugs, yes sir I did bring it. Just so that they will stop it."

Convicted, MCP

This indicates that by using physical violence even when prisoners had not committed offences, officers exerted control over the prisoners and maintained their authority in prison while also ensuring prisoners are discouraged from misbehaving for fear of violence.

2.2. Instances of violence being used as punishment

"They don't beat us without purpose"

Physical violence as punishment is seen justified by some inmates when it is used as punishment for an offence or wrong committed by an inmate, possibly indicating the prisoners' lack of awareness of the law and their constitutional rights. An important perception manifest in the narratives put forth by inmates is that during an altercation between inmates, or when a complaint is lodged against an individual, prison officers do not take steps to inquire into the veracity of accusations made against a prisoner before meting out a punishment. This punishment, more often than not, involves physical violence, which seems to be inflicted in an arbitrary and indifferent fashion. As prisoners stated:

"Whatever the wrong is, they hit first. After that only they ask about the offence. If two people fight in the ward, they hit both of them and then inquire about the accusation."

Male Remandee, JRP

"Today, the chief lady officer... she beat a lady. Another woman, she came to the office and told her that this woman had stolen something. But before you beat someone, you should check them. It's not correct that because of one woman's statement, she beat someone. We saw the beating. Whenever she opens her mouth, she says, 'I will kick you, I will beat you'."

Female Remandee, NRP

The type of disciplinary offences incurring beatings as punishment are as follows:

The possession or use of contraband

The Commission observed that a full investigation is not conducted when an inmate is accused of possessing contraband. According to prisoners, beatings are frequently used as

punishment for attempting to smuggle in or being found in the possession of drugs, tobacco or phones. As prisoners described it:

A: "I was beaten because I picked up a parcel. It was the parcel of an elder sister [another inmate]. I was told that it had tobacco and she told me to pick it up and give it to her. They [officers] beat me because I picked it up.

Q: Did they know that you are expecting a child?

A: They knew".

Female Remandee, WCP

"They beat people. They beat that lady with a wire for using a phone."

Female Remandee, NRP

"I saw them assaulting a boy and he was naked without any clothes, for the reason that he had some tobacco in his possession. I saw that. They assaulted him three or four days ago. What I saw was, they gave a bucket to a boy and then they told him to go to the toilet. They told him to remove his shirt and gave him a bucket to use it for toilet purposes. He was squatting on that bucket for a long time. Then later a doctor arrived in a white dress to give a tablet. Then again, another person arrived and started assaulting him with a baton. They assaulted him publicly. All were watching. They assaulted him so badly for having tobacco, and when he started assaulting him others joined him too. Later the next day I met him. He had a lot of wounds on the back and he had a cold too."

Male Remandee, BATRP

Inmates interviewed at every prison affirmed the involvement of prison officers in the illegal smuggling of contraband into prison. Without the abetment of prison officers, inmates who are not usually able to leave the premises to go to court or hospital without stringent body checks and strip searches being conducted, would not be able to access contraband. Food and items received during visits are also thoroughly inspected. Prison officers, on the other hand, undergo much lenient body checks as observed by the Commission, and thus, interviewees maintained that contraband could not be trafficked into prisons without the support of prison officers.

Sections 131,133 and 155 (4) of the SRs prohibit prison officers from introducing any articles prohibited by the Ordinance into the prison premises.³⁸³ Prison officers may be dealt with in accordance with the regulations related to dismissal or other punishment of public official for any act that is in contravention to PO. If the officer is found guilty in a summary trial before a Magistrate, he will be fined or imprisoned for three months or both.

³⁸³ SRs 1956, ss 236 - 238, outline the list of prohibited articles.

A stated point of contention was the phenomenon of inmates receiving punishments by prison officers for the contraband sold to them by the prison officers themselves. Inmates are discouraged from disclosing the truth about the complicity of officers to the SP as this ordinarily results in reprisals in the form of physical violence. The act of punishing an inmate for possessing contraband also does little to reduce the supply of illegal items, when the actual smugglers of contraband are not deterred from supplying it due to impunity. Inmates reported that sentences for the possession of drugs and phones can include increasing a prison term by months, while prison officers at most, in the few instances they were reportedly caught, have been transferred to other prisons as punishment for trafficking drugs and phones. The disproportionate sentencing and lack of adequate investigation contribute little to resolve the circulation of contraband, and result in inmates receiving inequitable punishments. As stated by an inmate from NRP:

“The officers are the ones who bring it inside. I have not gone out of this prison since 2015, so how I am going to get it? How am I going to get anything inside unless an officer brought it? My parents come and see me through a mesh, so I have no access.”

Senior members of the prison staff as well as various stakeholders who were interviewed admitted that prison officers smuggling contraband into prisons is a problem, and pointed out the ease with which payment for purchasing can be offered electronically, without the need for cash and without detection. Within such a complex context, inmates being punished without conducting a full investigation could result in the miscarriage of justice, especially in instances where the involvement of prison officers would go unpunished.

Inter-prisoner conflict

Beatings are also inflicted when inmates get into fistfights and conflicts with each other. As one prisoner stated, “When inmates have fights, then officers do not open the ward for three or four hours. They also beat up and ask us to kneel down”.

Punishment for attempted escape from prison

Attempted escape is an offence that incurs beatings as punishment. A separate instrument called the ‘escape pole’ is reserved to beat inmates who attempt to escape. This was affirmed by prisoners in multiple prisons, with an inmate describing it as follows:

“They have even beaten one of my friends because when they took him from the court to hospital because he had a heart problem, four or five inmates escaped from court. For that they beat him as well.”

Male Remandee, GRP

2.3. The extent of the use of violence

During the course of this study, the Commission uncovered the extent of physical violence inflicted on inmates by officers as punishment, apparently without fear of being held accountable, at every single prison in the sample of institutions. Through allegations of violence disclosed in interviews, questionnaires and complaint forms, incidents of attempts to hide assaulted inmates from the Commission during prison visits, inmates showing visible injuries consistent with their accounts of violence and conclusive reports of the JMO, it can be concluded that physical violence is an entrenched and systemic element of prison administration in Sri Lanka.

A total of sixty-three inmates from fifteen prisons lodged official complaints with the Commission in 2018, alleging they were beaten by a prison officer. On two occasions, in two different prisons, officers of the Commission witnessed an inmate being slapped by an officer, one of whom attempted to run away when he realized the Commission had witnessed his act.

In another prison, the Commission, in searching for a prisoner who was unaccounted for as he was not in the punishment cell as stated in the morning 'unlock' sheet, found him being held at the GH in an attempt by the prison officers to hide him from the Commission, as he had received a beating the previous night and showed visible signs of injury. Similarly, the Commission came upon at least eight prisoners, during the course of the prison visits, displaying identifiable and systematically inflicted wounds, bruising and scars, which the Commission proceeded to photograph, and requested the SP to produce the prisoners before a JMO.

During prison visits, the following procedure was followed by officers of the Commission in the event an inmate complained of being assaulted by a prison officer or displayed visible signs of injury. A full statement would be obtained from the prisoner alleging assault, which would include all details of the incident, names of any witnesses and any subsequent action taken by the prison administration. The statement would be signed by the inmate and photographs would be taken of the inmates' visible injuries and bruises. A letter would be issued immediately to the SP requesting the inmate to be produced before a JMO within twenty-four to forty-eight hours and notify the Commission within a specific duration of time that the prisoner had been so produced. The complaint would be referred to the Inquiry and Investigation Division of the Commission, which would register the complaint and initiate an inquiry.

3. Forms of punishment used in the prison system

Interviewees from multiple prisons frequently stated that one offence would result in multiple punishments being imposed on an inmate, which many stated was disproportionate and unfair. For instance, the possession of contraband could lead to the inmate being beaten, placed in solitary confinement as well as being produced before the Prison Tribunal - which could potentially result in additional time being added to the existing sentence, once proven.

The PO and DSO outline the number of ‘points’ to be removed from a prisoner’s record as part of the punishment, which would potentially impact the remission points an inmate earns which will result in his sentence being reduced leading to early release. However, details of this were not provided to the Commission by interviewees, possibly because they are unaware of this grading system or they were not informed if their marks had been duly deducted as punishment for a transgression.³⁸⁴

Collective punishment

A number of complainants revealed that prison officers frequently mete out punishments to all the inmates of the ward, when one inmate is found in the possession of contraband or only two inmates are involved in an altercation. As three prisoners from two different prisons described it:

“If one person makes a mistake, everyone will be beaten. If you look out of the window to see who is coming to visit us, such as mother or family, and if the officer finds out, he would come beat everyone irrespective of who did it. Since two inmates talked everyone was beaten up yesterday; they beat us using a baton.”

Male Remandee, JRP

“A phone was found in the ward and because of that they have stopped giving us milk powder. The person to whom the phone belonged did not get punished but all of us did.”

Female Convicted, ACP

“They took all four of us in the cell and hit us asking whose phone it was. There are times we’ve admitted it is ours because they kept hitting.”

Male Convicted, ACP

Ward transfers

Ward changes and transfers to other prisons are popular punishments awarded to inmates for various prison offences, including the possession of contraband and even as reprisals for making a complaint against a prison officer or about the conditions in prison.³⁸⁵ Many interviewees expressed this was one of the more severe punishments; being transferred to another ward was, in an inmate’s own words, like “coming to prison again from the beginning”. The inmate will typically not have a place to sleep in the new ward as he will be treated as a newcomer, without a designated border/sleeping area. He will also have to

³⁸⁴ For a detailed discussion of the points grading system, please refer chapter Rehabilitation of Prisoners.

³⁸⁵ For a detailed discussion on the use of ward transfers as reprisals for lodging complaints, please refer chapter Grievance Mechanisms.

readjust to a new environment and ward mates, which might also entail being placed lowest on the ward hierarchy where the use of facilities, such as sanitation facilities, are concerned. As described by a prisoner from BATRP:

"I'm in this ward for ten months and they told me to change the ward because I complained about this problem. It's not easy for a new inmate to become old. One has to face lot of suffering and troubles to become an old inmate or to get to that level. I cleaned the bathroom several times, threw the urine bucket lots of times, I cleaned the toilet lots of times, I cleaned the ward several times. We direct the new inmates to do things like throwing the urine bucket, with the intention that if we punish a new inmate, he won't come again. So, I asked them is this your decision? Is this your decision? When I complained about a problem that he's coming to beat me, you're telling me to change the ward."

Denial of food, water and family visits

Apart from a few isolated inmates, interviewees overwhelmingly informed the Commission that food and water are not withheld as punishment. In fact, inmates even commended the prison officers and members of the Kitchen Party for always ensuring food is received by all inmates.

When queried if inmates had ever been prevented from seeing their family in prison, 64% of male respondents and 75% of female respondents stated they had not been prevented from seeing their families. It should be noted that the answers do not strictly refer to the prevention of visits as a form of punishment but also being unable to see visitors due to the large number of visitors per day and cramped visit room conditions, which result in some visitors being unable to see prisoners before the conclusion of visiting hours.³⁸⁶

Although prison officers mentioned using the denial of family visits as a form of punishment, the majority of prisoners did not report the use of such a sanction during interviews. In the few instances inmates reported being prevented from seeing their family when they came to visit, it was primarily when they had been physically assaulted and the officers did not want their families to be made aware of it.

Other degrading punishments

Other punishments described by inmates included ad-hoc and arbitrary punishments, such as kneeling on the ground while holding two stones, throwing food on the floor and requiring inmates to eat it off the ground, and forcing the inmate to lie down in an open sewer outside the ward. In one case, where the television of a ward had been damaged, the SP withheld the installation of the new television for a period of time as a disciplinary measure. Punishments described by the inmates often indicated an element of purposeful degradation intending to

³⁸⁶ For a detailed discussion of visits, please refer chapter Contact with the Outside World.

humiliate an inmate, in full view of other prisoners and officers. As an inmate from NRP stated:

“We do not have a special container to throw the used sanitary napkins away. Crows are attracted to the smell and peck the bag and dirty the place. We get scolded for that. Today a similar incident happened and as punishment we had to all touch the pad with our hands. They let us go because you came, otherwise they would have made us touch it.”

Punishments imposed by Local Visitors

As mentioned in the Grievance Mechanisms chapter, members of the Local Visiting Committee have the power to mete out a punishment of confinement or a restricted diet where they feel a prisoner is making a frivolous or malicious complaint.³⁸⁷ Even though Section 803 of the DSO requires the Visitors to follow a uniform procedure when discharging their functions, it is observed that due to the lack of guidelines provided in the legislature, the decisions of Visitors with regard to the punishment of prisoners can be arbitrary. There is no requirement to conduct an inquiry to ascertain the veracity of the inmate’s complaint before awarding such a punishment. This procedure could potentially allow for arbitrary punishments to be imposed by a non-judicial body, which is not held accountable by a supervening authority, contrary to the standards set out in the SMRs for the imposition of sanctions.³⁸⁸

Visitors also possess quasi-judicial functions, which empower them to even extend the sentence of a prisoner in a judicial capacity, among other punishments.³⁸⁹ It must be pointed out that further deprivation of a person’s liberty must be authorized by a court of law, with proof beyond reasonable doubt while maintaining all due process safeguards and adhering to evidentiary standards.

4. Patterns in the perpetration of violence to maintain discipline and as punishment

A number of patterns were identified based on the data gathered by the Commission during the study.

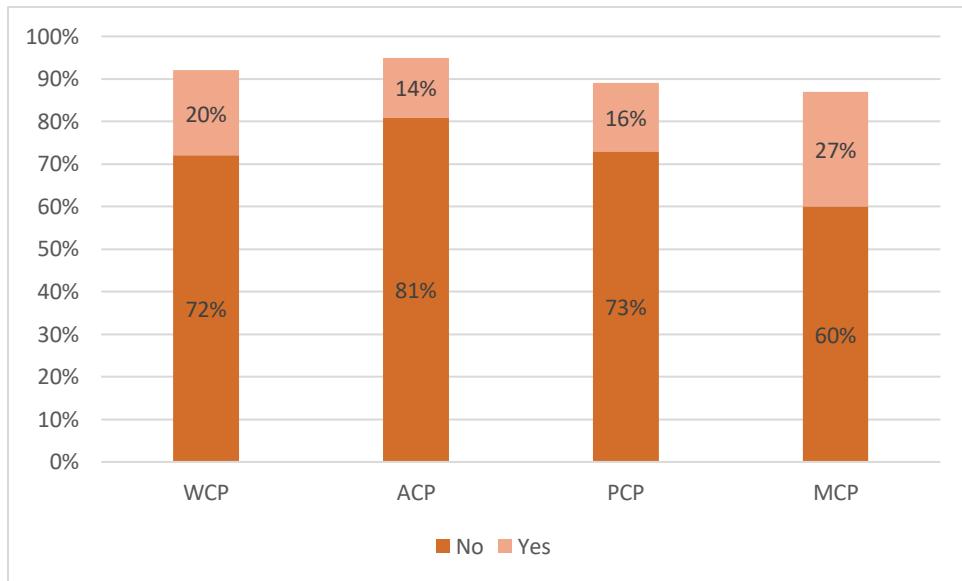
Complaints of assault were received from male and female inmates, young and elderly, of all religions and ethnicities. Quantitative data reveals that of the total sample, 17% of male respondents and 6% of female respondents stated that they have suffered some form of physical ill treatment by a prison officer. Allegations against officers for inflicting physical violence were received from every single prison and type of institution i.e. remand and closed prisons, and work camps and open prison camps as illustrated in the following graphs.

³⁸⁷ ibid s 41(2).

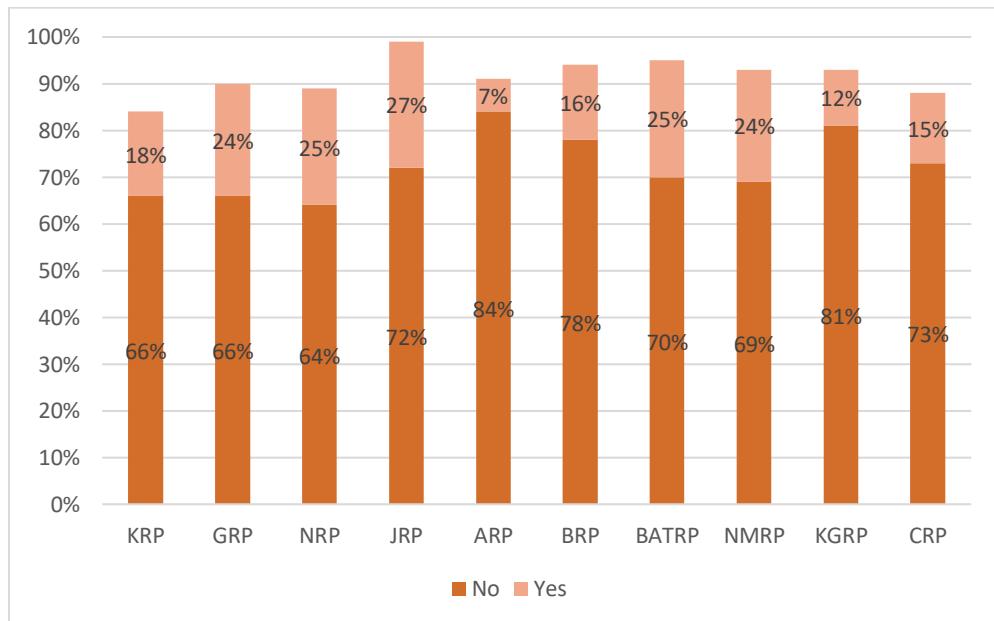
³⁸⁸ For a detailed discussion on the Local Visiting Committees, please refer chapter Grievance Mechanisms.

³⁸⁹ ibid s 81.

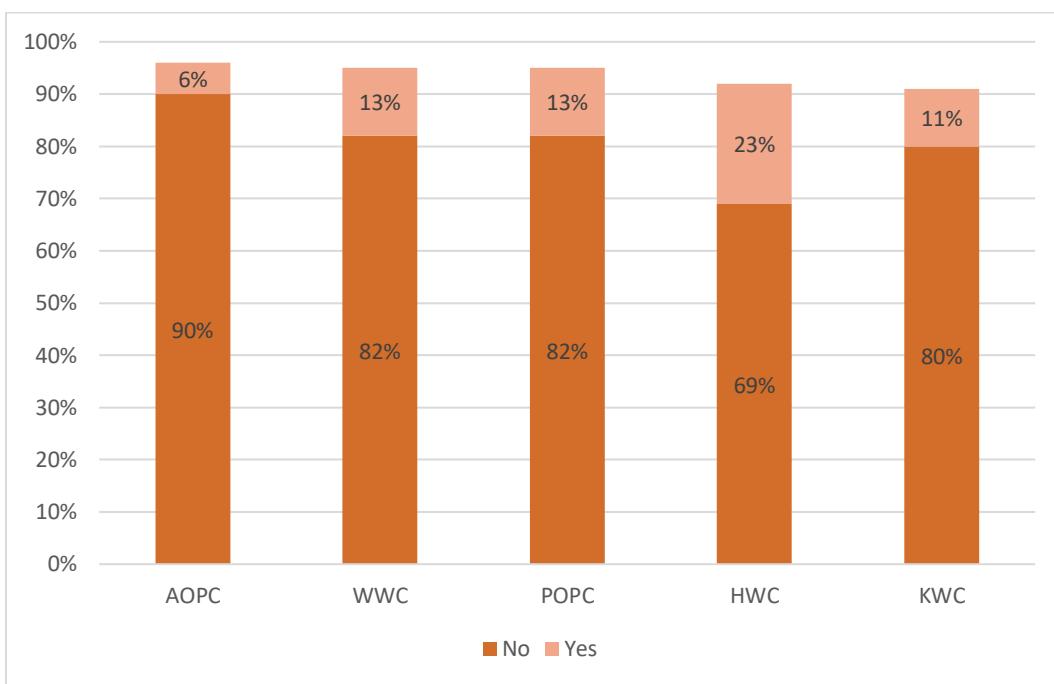
Graph 14.1 – Male respondents across closed prisons on whether they have been physically ill treated by a prison officer in the prison in which they were housed



Graph 14.2 – Male respondents across remand prisons on whether they have been physically ill treated by a prison officer in the prison where they were housed



Graph 14.3 – Male respondents across open prison and work camps on whether they have been physically ill treated by a prison officer at the prison where they were housed

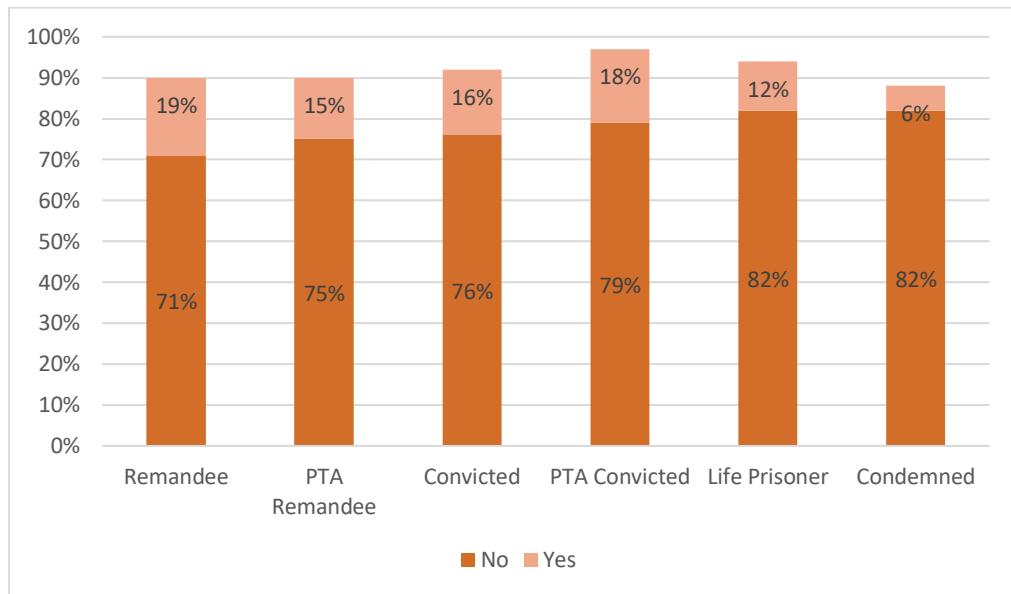


It was observed that the rate of violence was higher in closed and remand prisons, as indicated by the quantitative data. A possible reason for this could be that closed and remand prisons possess a perceptibly higher risk of contraband being smuggled inside due to the large number of remand prisoners, who are entitled to receive visits six days a week and the high turnover of prisoners, compared to open prisons and work camps. As discussed, violence is the foremost response by prison officers when inmates are found in the possession of prohibited items. Further, closed and remand prisons are overcrowded and consequently, officers in closed and remand prisons highlighted the higher level of work stress in their environment due to the challenges faced in maintaining order and discipline in an overcrowded prison. As discussed in the chapters Challenges Faced by the Prison Administration and The Continuum of Violence, prison officers are more likely to react with a physical response to prisoners when they work in unsatisfactory and stressful work conditions.

Based on quantitative and qualitative data collected during the study, the Commission was able to discern that the highest level of violence was reported in MCP. Inmates from the prison described it as a “slaughterhouse” and a “punishment prison” to which persons from other prisons would be transferred as punishment.

Issues with overcrowding, contraband and discipline in general are not prevalent at open prison and work camps, as prisoners are considered to be rehabilitated and ready to reintegrate into society, and therefore would be likely to cause less disruptions to order. As a result, the use of violence to quell disturbance would be less in work camps, which could be one reason the level of violence is lower in work camps. However, this is not an indication of the absence of physical ill treatment and violence.

Graph 14.4 – Male respondents across prisoner categories on whether they have been physically ill treated by a prison officer in the prison in which they were housed



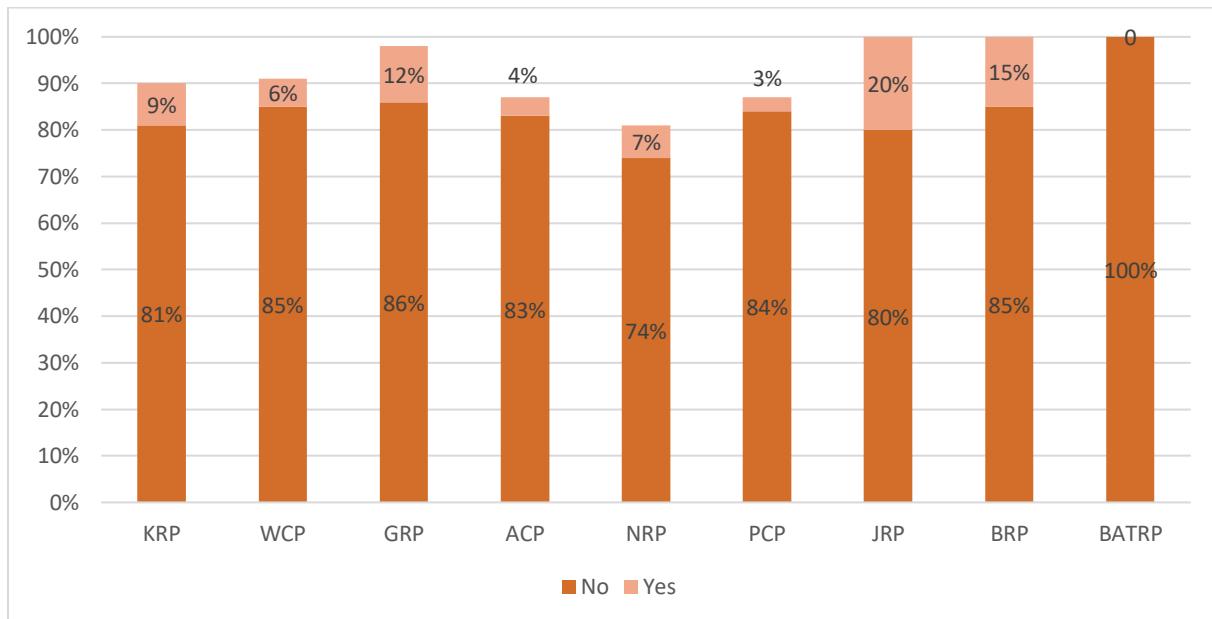
When the data is disaggregated across prisoner categories, of the male respondents, 19% remandees, 18% PTA convicted, 16% convicted, 15% PTA remandees, 12% life prisoners and 6% condemned prisoners stated that they had been physically ill treated by a prison officer in the prison in which they were held, at the time the questionnaires were administered. Across prisoner categories, of the female respondents, 19% remandees, 14% life prisoners, 6% condemned prisoners and 2% convicted stated that they were physically ill-treated.

It should be noted that both condemned men and women reported the least experiences of violence at the hands of prison officers. During interviews, condemned prisoners testified to the level of violence in the prison, but generally did not complain of being beaten themselves after the pronouncement of their sentence. It has been observed and reported that prison officers tend to feel empathy and sympathy for condemned inmates due to the prolonged and indeterminate length of their sentence and are often afraid of upsetting them.³⁹⁰ There is also a general sentiment expressed by condemned inmates that, since they have nothing to lose while they are in prison, and hence would not be discouraged to revolt by way of hunger strikes, prison officers are discouraged from perpetrating violence and causing further distress to them.³⁹¹ It must also be pointed out that condemned prisoners are locked inside their wards for up to twenty-three hours a day, and hence come into little contact with prison officers compared to other groups of prisoners.

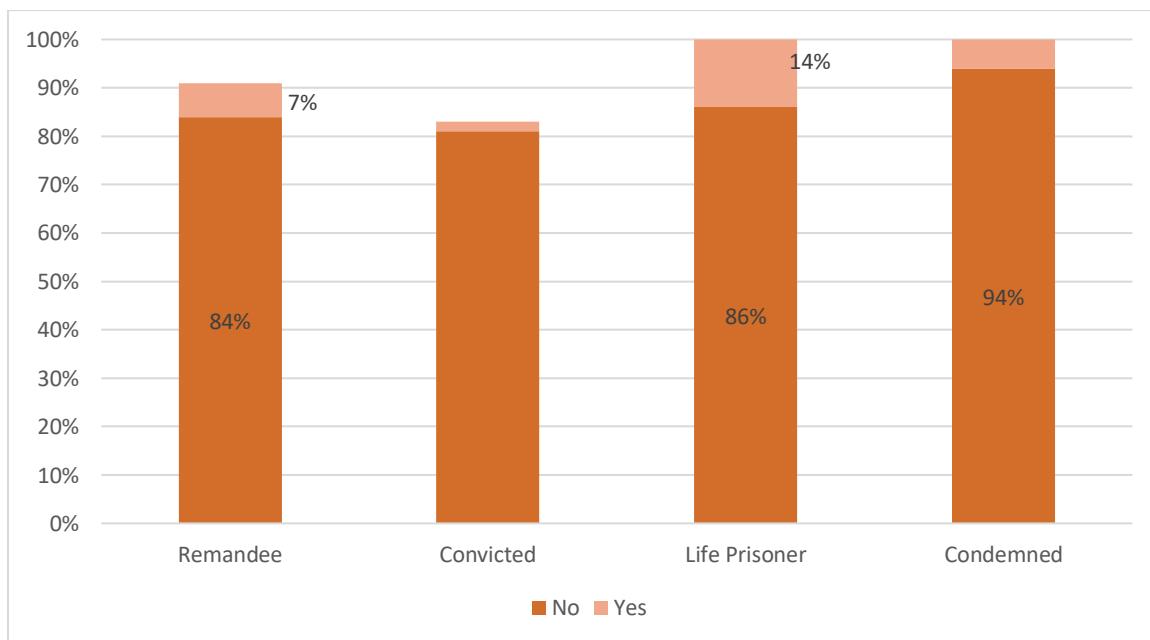
³⁹⁰ For a detailed discussion on the relationship of condemned prisoners and prison officers, please refer chapter Inmate-Officer Relationship.

³⁹¹ For a detailed discussion of the conditions of condemned prisoners, please refer chapter Prisoners on Death Row.

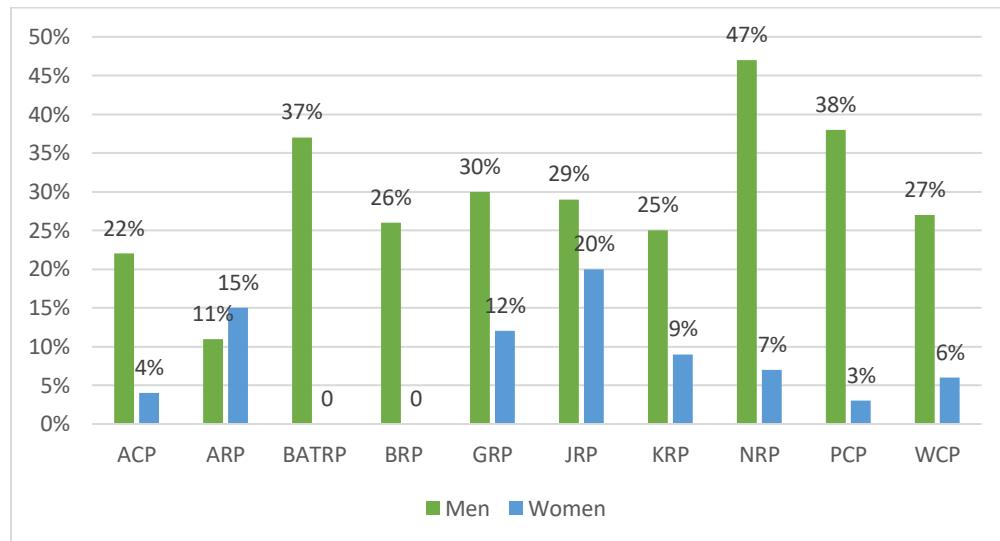
Graph 14.5 – Female respondents across prisons on whether they have been physically ill treated by a prison officer at the prison in which they were housed



Graph 14.6 – Female respondents across prisoner categories on whether they have been physically ill-treated by a prison officer in the prison where they were housed



Graph 14.7 – Comparison of male and female respondents in the same prison regarding whether they have suffered physical ill treatment at the hands of a prison officer.³⁹²



The lower level of violence experienced by female prisoners was also indicated in qualitative interviews and complaints received by the Commission. It is possible that female prison officers do not resort to the same level of violence to maintain order and discipline as male prison officers, as women were thought to be easier to control than men, and hence the use of violence as a deterrent was not thought necessary.³⁹³

Foreign national interviewees stated that foreigners are not subjected to violence as they have the protection of their embassies, which gives them “immunity” from such punishment. The only nationality of inmates who claimed they were beaten by prison officers in more than one prison were Nigerian remandees. As one remandee stated:

“Sri Lankan people are very friendly. Sri Lankan people, they have some special treatment for foreigners. Let me be honest. I think they only have issues with Nigerians... even the guards.”

Male Remandee, CRP

“So, in 2013, some Sinhala prisoner brought some stones. This many [indicating quantity of stones]. Suddenly he beat one Nigerian fellow. Officers again they beat that Nigerian. They didn’t support him. They supported that Sri Lankan.”

Male Convicted, MCP

³⁹² Remand prisons and closed prisons where both men and women are housed were used for the comparison. In BRP and BATRP no female respondent reported having experienced physical ill treatment in those respective prisons.

³⁹³ For a detailed discussion, please refer chapter The Continuum of Violence.

A similar perception existed amongst female foreign nationals as well, who claimed they are not beaten because of their foreign status, unlike the local inmates. The only instance of physical violence against foreign national females of which the Commission was informed was against two Muslim inmates from Somalia, who would have been beaten with a bamboo stick by a female prison officer, if not for the intervention of another foreign national remandee, who stated she took the bamboo stick from the officer and refused to let the assault take place. In her words, “this kind of discrimination based on ethnic group and religion still exists”.

Interviewees also claimed that officers do not assault inmates of a higher socio-economic class or education level, or prisoners who wield a degree of power and influence within the prison and outside, and only treat individuals from disadvantaged backgrounds in this manner.³⁹⁴

5. Patterns in the profile of alleged perpetrators

As indicated in the narratives and complaints received by the Commission, it is mostly the SM, Location or In-Charge officers at the grade of guards and jailors who beat inmates. Allegations against some SPs of prisons and CJs for performing or ordering the assault on a prisoner were made as well; as one prisoner stated, “Once the (former) CJ brought a boy here and beat him for telling in the court that the jailer hit him”. As another said: “...I complained to the SP and he told me that I deserved that beating”.

Beatings are also said to be inflicted on one inmate by multiple officers simultaneously, as was reported in a number of prisons from around the country. It was also stated that while other officers and even senior officers may not participate in the beatings, they remain on-lookers and make no attempt to intervene.

The other pattern that was noted is that inmates from different prisons alleged that officers frequently inflict violence while being intoxicated, which often happens at night. Such allegations were received from remand prisons in Colombo as well as closed prisons in rural areas. As some interviewees reported:

“Last Sunday, he took a big pole and forced everyone to go for the ‘shramadana’ by continuously hitting them. After sending them for ‘shramadana’, they were sent again to the sections in their wards. When he shouted, we smelt arrack on his breath.”

Male Convicted, POPC

“In the night the officers on duty would change and when the (night shift officers) come here they would be drunk. It is very dangerous for the prisoners

³⁹⁴ For a detailed discussion on discriminatory treatment faced by inmates in prison, please refer the chapter Inmate-Officer Relationship.

when they come to work drunk. They would beat the prisoner even for the most minor misdemeanour, because he is not in the right state of mind."

Male Remandee, ARP

"This one person here, before coming to work he drinks and afterwards... he's very angry with all the people. Hitting, shouting, he doesn't care... shouting because he's drunk, no."

Male Remandee, CRP

Disciplinary action is rarely taken against an officer accused of perpetrating violence. In fact, the structure of the grievance mechanism, where privacy is not protected and prisoners may have to inform low-ranking prison officers of the reasons they wish to speak to the SP or CJ, discourages inmates from reporting violence.³⁹⁵ In such instances, prisoners could be subjected to reprisals and forced to withdraw their complaint, as expressed by a prisoner from KRP who describes his experience thus:

"An officer hit me. After that they asked me to give a statement saying he didn't beat me. They recorded my statements and got my signature mentioning he didn't beat me so there is no case to investigate. When there are so many people pressing me to do so, how can I say what I want to say? Because I have to stay here. I can't go out after complaining."

The Commission also heard praise for senior officers who do not tolerate violence. As one prisoner mentioned:

"The SP told us, "no officer can beat you". If any wrongful act is done to us, the SP will find out about it. There are officers who beat us here. I have gone to the SP to complain that I got beaten, and SP scolded the officer "don't treat the prisoners unfairly". This SP is like a God in this prison."

Convicted Male, BRP

Interviewees always clarified that all officers of the administration do not beat the prisoners and it is only some who engage in violent behaviour and treat prisoners as inferior.³⁹⁶

6. Methods and means of perpetration of violence

From every prison, prisoners claimed beatings involve the infliction of slaps as well as violence in a manner that would require immediate medical attention. One of the complaints received by the Commission was from a handicapped inmate who alleged he is now permanently unable to walk as a result of an assault perpetrated by a prison officer.

³⁹⁵ For a detailed discussion, please refer chapter Grievance Mechanisms.

³⁹⁶ For a detailed discussion, please refer chapter Inmate – Officer Relationship.

Interviewees from different prisons stated that water is thrown on them while or after they are assaulted.

Instruments allegedly used to commit the act include, apart from the officer's hands and legs, sticks, wires, pole, clubs, wood/firewood, bamboo sticks and even wicket poles. Instruments are given names, such as a wire termed '33,000 volts', in order to threaten the victim and at MCP inmates said they may even be asked to choose from one of three blunt instruments which would be used in the assault. As one prisoner stated:

"They hit a lot here. They have a club; they say on this club there are different names written on it. As in to humiliate a person. So, they hit him with that club. They say his name is written on it."

The majority of interviewees affirmed they are beaten in public so as to function as a warning to other prisoners. In the words of one of the interviewees:

"They hit in front of everyone to scare the others. They want everyone to see when they beat. Open. Everyone will see. They say that everyone must see. They don't just hit normally; they tell you to hang and then they beat with a club on your back."

Remandee, MCP

Inmates stated they are also frequently made to kneel while being beaten and they are hit repeatedly on the soles of their feet, as this does not leave visible injury marks. Inmates described it as follows:

"They always beat me on the legs. On the soles of my feet. About three or four people hit me. They put water on me. After beating me, they put water on me. After putting water, the marks of injuries fade. That day, I had to sleep with the water still on my clothes, they didn't let me take them off."

Male Remandee, GRP

"They don't beat slightly; they beat with brutal force. They'll hit us by telling us to raise our hands or hang on to a wall. After that they'll tell us to sit on the floor and beat us on our legs. If they hit me on the leg today, I'll have a headache tomorrow."

Male Remandee, MCP

Interviewees frequently used the word 'inhuman' in Sinhala, Tamil and English to describe the way in which physical violence was employed.

7. The prison administration's response to violence

Interviews conducted with the SPs of every prison did not indicate that the same level of violence, as narrated by the inmates or as witnessed and unearthed by the Commission, exists in prisons. SPs generally maintained force is rarely used, and the use of force is limited to instances where inmates are particularly violent and need to be controlled or restrained, including when the inmate is mentally unstable. It was also reiterated that violence is not used to break up fights between inmates; shouting and reasoning with the inmates was said to be sufficient. It was repeatedly emphasized in the interviews with SPs that force utilized by prison officers does not “result in the inmate suffering serious physical injuries”.

Contrary to the narratives of prisoners, SPs stated the baton, which is part of a prison officer’s uniform, is only used when necessary – although such incidents of necessity were neither specified during the interview, nor are they formally recorded by the SM Branch in writing. A number of CJs affirmed that prison officers may use a baton to separate fighting inmates. However, no guidelines are set out to describe what constitutes reasonable force under Section 13 of the PO or the protocols to be followed when force has to be used, for instance, in the event of a riot or in self-defence.

One CJ mentioned that inmates are beaten by officers if they refuse to surrender the contraband which is allegedly in their possession. Another CJ mentioned during his interview that he receives complaints from prisoners about officers inflicting assault and verbal abuse – according to him, “minor” incidents are dealt with by the SP who speaks to the prison officer and settles it, while “major” incidents are reported to the Headquarters for disciplinary action. While the Commission has been notified of instances of officers who were caught smuggling contraband being interdicted or transferred as punishment, similar disciplinary action taken against perpetrators of violence has not been reported to the Commission. This indicates the lackadaisical attitude of the individual prisons and the DOP towards the infliction of physical violence on prisoners. This is evinced by the statement of one SP who stated: “...the inmates exaggerate beatings sometimes. The marks on their body can also be created by other methods. For example, if you rub a plastic bag on your body, it will produce the same marks as that of a baton”.

One SP stated that the jailor is required to inform him, in writing, of any instance when force is used. In this regard, as per the PO, the SP has the discretion to award punishments, as he sees fit, where certain offences are concerned, and Section 80 of the PO requires the jailor to record punishments meted out in response to the various offences committed by prisoners. The Commission found that while records are maintained detailing the Prison Tribunal proceedings, punishments awarded by the SP are not recorded in the Punishment Book at many prisons, indicating the lack of written accountability in relation to the awarding of punishments.

Similarly, records of complaints made by prisoners accusing prison officers of assault or of any related inquiries held were not found to be maintained. In one prison, the preliminary inquiries book maintained by the SM Branch stated the last inquiry conducted into a complaint of assault lodged against a prison officer was in 2015. Prisoners of the same

prison, on the other hand, attested to the indiscriminate level of violence in both the male and female sections of the prison. A request was also made by the Commission to the SP to produce a prisoner from this prison to the JMO, as he had been assaulted prior to the Commission's visit and no action had been taken by the prison administration.

The Commission was informed by inmates that, while they may be taken to the PH to receive treatment following assault, MOs only on rare occasions refer the person for an examination by the JMO, of their own volition. It has to be noted that in the instances that MOs refer prisoners to the JMO of their own volition, it is likely that they will encounter challenges since the SP of the prison would have to authorize the transfer of the prisoner to the JMO. Prisoners are taken to the JMO for examination when the court or the Commission directs the SP. Hence, when an inmate does not complain about the violence that he/she suffered to the Commission, the alleged perpetrators would be able to escape with impunity and there would be no medico-legal record of the injuries sustained due to the assault. Consequently, the need for prison administrations to take strict disciplinary action against prison officers against whom allegations have been proven, to ensure justice is served cannot be overstated.³⁹⁷

7.1. Liability and the chain of command

As illustrated in this chapter, despite existing legal protections against ill-treatment and torture or the use of violence as a form of punishment, it was observed by the Commission that physical violence is still being used in prisons as a method of inflicting fear, reprisals and punishment for insubordination. SPs mentioned to the Commission that corporal punishment is no longer implemented in institutions within the purview of the DOP. At the same time, a lack of awareness was observed among prison officers with regard to the prohibition of corporal punishment and torture being an offence punishable by imprisonment.

According to section 12(1) of the PO all prison officers shall obey the directions of the SP. However, by virtue of the Convention Against Torture Act, the fact that an act which constitutes an offence under this statute was committed on an order of a superior officer, cannot be a defence to such offence³⁹⁸. The Supreme Court in a judgment delivered in 2014 with regard to a custodial death by an unlawful act of police officers held that:³⁹⁹

‘...Court notes that the defence of duress in fact and in law, as the accused has acted with impunity in blatant abuse of their power, the defence of duress cannot be relied upon to provide perpetrators with a pretext for avoiding the responsibilities that have been entrusted to them, especially when the proven facts speak otherwise.’

³⁹⁷ For a detailed discussion of the role of Medical Officers in cases of torture in custody, please refer chapter Access to Medical Treatment.

³⁹⁸ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, s 3(b)

³⁹⁹ *Kumarasiri and Others v AG* (SC TAB Appeal No 02/2012)

It must also be emphasized that in a judgment delivered in 2018, the Supreme Court ordered compensation to be paid to a female prisoner who was assaulted in the Kandy Remand Prison (now PCP) by female prison guards. The SP of the prison and the CGP were also made respondents in this case and the Supreme Court directed the AG to prosecute the liable respondents under the Convention against Torture Act.⁴⁰⁰

It is essential that superior officers take immediate action with regard to an unlawful action of a subordinate officer that violates the right of freedom from torture of a prisoner. Immediate action includes providing medical attention to the victim, producing the victim before a JMO and taking necessary action to prevent the violation of the fundamental rights of the prisoner in future. Therefore, the need to take necessary disciplinary action against the accused prison officers after a fair and just inquiry must also be emphasized. In *Saman v Leeladasa and Another*, the Supreme Court found that the CJ and the SP of a prison who took prompt action in providing medical attention to the victim who was assaulted by a prison guard by interdicting the prison guard responsible for the assault with immediate effect, and engaged in no ‘cover up’, were not liable for the actions of the junior officer.⁴⁰¹

Superior officers can therefore be held liable for the infringements or imminent infringements of fundamental rights, such as freedom from torture, unless prompt action is taken by the superiors to remedy the situation by providing medical attention to the victims, and taking necessary action against the subordinates.

8. Solitary confinement

The SMRs describe solitary confinement as confinement for twenty-two hours or more without meaningful human contact and forbid indefinite or prolonged solitary confinement, as well as a detainee being held in a dark cell for more than fifteen consecutive days. It is also prohibited to hold inmates with mental or physical disabilities in solitary confinement.

The UNODC Handbook for Prisoners with Special Needs outlines the hardships faced by persons with mental illnesses in complying with prison rules, the outcome of which may be disruptive behaviour, aggression and violence. Disciplinary sanctions for disruptive behaviour, which involves solitary confinement would exacerbate the mental illnesses suffered by such persons, and could risk leading to self-harm and suicide.⁴⁰²

The PO also states that a prisoner can be held in a punishment cell for a period not exceeding fifteen days, or in close confinement for up to three days with a restricted punishment diet⁴⁰³ when the punishment is imposed by a SP, and up to one month in a punishment cell where the prisoner is sentenced by a Tribunal⁴⁰⁴. According to the PO, a ‘punishment’ cell is an

⁴⁰⁰ *Nandani Kumari vs Ekanayaka and Others* (SC /FR/ Application No. 599/2009)

⁴⁰¹ [1989] 1 SLR 1

⁴⁰² For a detailed discussion, please refer chapters Death in Prison and Access to Medical Treatment.

⁴⁰³ PO No.16 of 1877, s 79(f).

⁴⁰⁴ ibid s 81 (4)(a).

unfurnished cell used for the purpose of carrying out any punishment and ‘close confinement’ refers to confinement of a prisoner such that he is deprived of all communication from other prisoners.⁴⁰⁵ Section 222 (7) (b) states ‘Punishment Diet No. 1’ may be given to prisoners who have been sentenced to confinement in a punishment cell, and (c) states ‘Punishment Diet No. 2’ may be given to prisoners kept in solitary confinement.⁴⁰⁶

Every single prison employs the use of ‘punishment cells’ or isolation in a separate cell to sanction inmates. Of the male respondents in the study, 12% stated they were held in a punishment cell while 8% of female respondents stated the same. The offences which can warrant time in the punishment cell, as stated by prisoners, include fights with other inmates, being caught in the possession of or using drugs, tobacco or phones and/or attempting to escape.⁴⁰⁷ For example, a convicted female prisoner stated that:

“[In WCP], They keep inmates [in punishment cells] when they get caught with things thrown from outside, caught with a mobile phone, and inmates consuming drugs or tobacco. The inmate who engages in illicit activities like this will be kept in the punishment cell. [They are held there for] about fourteen to twenty days. [They] keep five persons in one cell.”

8.1. Punishment cell conditions

A number of patterns were observed regarding the conditions of solitary confinement in prisons across the country.

The conditions of solitary confinement vary from prison to prison and are largely based on prison infrastructure as well as the level of occupancy. Some prisons hold multiple prisoners in the punishment cell due to their saturated capacity. The Commission also observed separate cell wards used for solitary confinement, or specific cells inside the ward itself. Cells frequently hold multiple persons serving a punishment, with sentences allegedly lasting for up to two to three months, while the maximum number of days specified by the SMRs is fifteen days.

The Commission observed punishment cells typically did not receive much natural light as they had no or small windows, and they did not contain light bulbs or fans. Many punishment cells did not have toilets or bathing facilities, and hence its occupants would have to use buckets to relieve themselves, as was observed in JRP, CRP and NMRP. Most punishment cells were highly unclean and damp. A number of inmates asserted they were not given mats

⁴⁰⁵ ibid s 104.

⁴⁰⁶ DSO 1956, s 511, Punishment Diet 1 includes the provision of half the quantity of vegetables and curry compared to the normal diet, while Punishment Diet 2 allows only rice and salt to be provided for lunch and dinner and a cup of tea for breakfast and in the evening

⁴⁰⁷ PO No.16 of 1877, s 78, outlines the list of Prison Offences.

during their time in solitary confinement and were required to sleep on bare ground. As a prisoner at KRP stated:

"After beating us they threw water on us and then put us into the punishment cell which doesn't even have a mat. Rats, cockroaches, mosquitos are abundant in that cell. I have been locked in it for weeks- months without a pillow and a mat".

Inmates in solitary confinement are not taken out of the cell for more than half an hour, and sometimes they may not be taken out of the cell at all in a single day when it is raining outside or if the prison is short-staffed. Food is usually brought to the cell, and the use of restricted punishment diets, as outlined in the PO, was not reported to the Commission. Inmates also stated that due to the lack of prison staff, it is difficult to communicate with officers in case of illnesses and emergencies suffered by inmates held in the punishment cell or solitary confinement, as there will be no officer permanently stationed outside their cell.

One of the longest serving inmates in WCP was interviewed about the conditions of the punishment cells decades ago. He stated that he had been held in solitary confinement in one of the Chapel basement cells, which are allegedly no longer used, in 1997 for seven days. The prisoner stated that he was sent to solitary confinement as a punishment for attempting to brew alcohol using fruits. While in solitary confinement, he was provided the same food as the other prisoners but said that he could not sleep on the floor as rattlesnakes and Bengal monitors crawled inside the cells during the night. He was reportedly given a bucket to urinate and defecate in throughout the day and night, as the cell was kept locked at all times and there is no toilet in the cell. He would be taken outside every morning to clean the bucket. Even though prisoners in punishment cells were not allowed to bathe, the officer who was overseeing them at the time allowed them to bathe every day. According to this prisoner, the last time a person was held in solitary in the Chapel basement is in 2002. WCP now uses cells in Chapel D1 for solitary confinement.

With regards to present conditions of punishment cells, prisoners of ACP, which was opened in 2017, informed the Commission of a practice followed by the prison administration of keeping inmates naked in solitary confinement, which was observed by the Commission during a follow-up visit. Additionally, they are neither taken out at all nor allowed access to showers. Such practices were not reported to the Commission from any other prison. As three interviewees in this prison stated:

A: "I was locked in the punishment cell for seven days. They did not open it. Someone from a group, someone will come and give me food. Will give food for all the three meals and go. There was no difference. Got the same ration we got out there.

Q: Are there lights in the punishment room?

A: No. Umm I got light from the lights outside. I got a little bit of light like a square from the lights outside. That is it. After three days they gave me clothes. Clothes as in underwear. They did not give other clothes.

Q: How did you sleep?

A: On the floor. There was nothing. They remove the clothes there itself. Remove it in front and leave it somewhere on the other side and go inside."

Convicted, ACP

Q: "Did they take you out for a bath?

A: No, they didn't.

Q: Before you were locked in the punishment cell, were you produced before the doctor?

A: No.

Q: Did the doctor come and check?

A: No"

Convicted, ACP

"On the day that I was locked up in the punishment cell they did not let me meet my sister. I asked if I could see but they said I cannot. I do not have the right to meet them when I am in the cell. They told me that. Actually sir, putting in the punishment room for seven days is too much. Too much as in, we are anyways in a lot of problems and in mental anguish. It becomes worse when they put us in there. When we have to stare at four walls for seven days... honestly cannot even sleep. I can't explain how I spent those seven days. It was like spending one year."

Convicted, ACP

The Commission was informed by prison officers that the practice of holding inmates naked in solitary confinement is followed at ACP to prevent them from self-harming or attempting suicide. Officers allege that prisoners held in solitary confinement are inclined to engage in such behaviour in an attempt to be released from solitary confinement because if they self-harm they will have to be removed from the punishment cell to receive treatment. Where the conditions of punishment are such that they cause prisoners to want to harm themselves, the purpose of confining the prisoner is lost, and the punishment would amount to cruel, inhuman and degrading treatment. The impact of such punishment on the mental state of a prisoner is illustrated by the following statement of an inmate from ACP, which also indicates the failure of the system to prevent re-offending:

"He [SP] has no sympathy towards any person. No human side. [He] has very strict rules. Miss, I have never heard of something like this. We get disgusted with ourselves when kept in a room for that long, without any clothes on, with mosquitoes biting us. (long pause) If he does that to us, when we get out of here, we would have a hatred towards this man and would feel like coming back, looking for him. We are scared of that. Being tempted to do something wrong again in case this man does that to us. We feel like we don't know what we will do to that man. If he does that to us, we would definitely get angry, no miss? Taking off the clothes".

Male Convicted, ACP

9. Prison Tribunal

9.1. The legal framework

SMR 41 sets out the standards to be adhered to when a competent authority decides the culpability and sentence of an inmate who has been accused of committing an offence in prison. It requires that the investigation is conducted without undue delay and the inmate must be allowed to defend himself or have access to legal representation.

The UNODC Handbook on Persons with Special Needs reiterates the need to ensure persons with mental disabilities are able to understand and defend themselves during a disciplinary hearing and are allowed necessary access to a medical practitioner or advocates.

Section 81 of the PO outlines the offences for which a Prison Tribunal can be convened as well as the constitution and powers of the Tribunal. The Tribunal can be convened when a prisoner escapes or attempts to do so, incites a mutiny or causes or attempts to cause grievous harm to a prison officer⁴⁰⁸, or any other offence which a SP or Visitor feels may not be adequately punished by the sanction outlined in the relevant law. The inquiry must be conducted within seven days of the SP receiving knowledge of the offence⁴⁰⁹, and if the two Visitors fail to appear, the Magistrate may adjudicate by himself. The Tribunal has the power to inquire into the offence and punish the offender by majority verdict, with a term of confinement in a punishment cell, or a term of imprisonment or any punishment that a SP is authorized to impose.⁴¹⁰ Section 84 of the PO disallows appeal of conviction imposed under Section 79 or 81.

The SRs set out the procedures in relation to the formation of the Prison Tribunal. According to the SRs, the District Judge may summon two members of the local Visiting Committee to

⁴⁰⁸ PO No.16 of 1877, s 81 (1)(a).

⁴⁰⁹ ibid s 81 (2).

⁴¹⁰ ibid s 81 (4).

sit on the Prison Tribunal⁴¹¹ and the Tribunal must be conducted in the presence of the prisoner⁴¹². The Rules further stipulate that the prisoner shall be informed of the charge against him and must be given at least three hours before the Tribunal is convened to prepare a defence and call upon any witnesses.⁴¹³ The provision also stipulates the need to record proceedings and the evidence admitted. It also requires Prison Form 100 to be completed and signed by the Tribunal outlining the punishment to be carried out or stating the not guilty verdict, to be communicated to the SP. A register must be maintained of all inquiries conducted by the Tribunal, a copy of which must be signed and sent to the Attorney General every month.⁴¹⁴ The Commission was informed by the DOP that although the details of Tribunal proceedings are sent to the DOP (K Branch), copies are not forwarded to the Attorney General.

Prisoners who discussed the Prison Tribunal with the Commission mentioned that only the judge presides at the Tribunal and they have never seen members of the Visiting Committee being part of the Tribunal.⁴¹⁵ The SP of WCP stated that two members of the Visiting Committee are summoned during a Prison Tribunal hearing, but he was the only SP to mention the attendance of the Visiting Committee at the Prison Tribunal. The DOP Commissioner of Administration and Intelligence at the time informed the Commission that Local Visiting Committees had been appointed for all prisons except a few. He stated further that the purpose of the participation of members of the Local Visitor's Committee in the Tribunal is to add a 'humane touch' to the adjudication process by inviting two members of the local community to decide on the prisoner's culpability and impose a sentence. However, he mentioned that since the position is honorary and voluntary without any remuneration, many Local Visitors are disinclined to participate in the Tribunal⁴¹⁶.

9.2. The conduct of proceedings

Multiple complaints were received about the manner in which Prison Tribunals are conducted, with prisoners stating that the cases filed and the proceedings are conducted in an arbitrary manner without uniformity. As affirmed by one interviewee from NRP:

"They do. They do put (a case in the Prison Tribunal) Miss. Some are pardoned if caught. Some are produced. There's no proper mechanism. It's not like everyone is charged. The law is not common to all".

Inmates stated that Tribunal proceedings for offences committed in the prison are held inside the prison premises before a judge or the accused may be taken to a courtroom, at the

⁴¹¹ SRs 1956, s 271.

⁴¹² ibid s 273.

⁴¹³ ibid s 272.

⁴¹⁴ ibid ss 274 – 276.

⁴¹⁵ PO No.16 of 1877, s 39 (4), 'Every District Judge or Magistrate shall be deemed a Visitor for the purposes of the Ordinance of any prison situated within his jurisdiction and may exercise powers and duties of a Visitor'.

⁴¹⁶ The Gazette of names of Local Visitors appointed in 2016 revealed that no women are on any of the appointed committees.

discretion of the SP depending on the severity of offence. While the Tribunal may be convened in some prisons for offences relating to the possession of tobacco or inter-inmate fights, in other prisons the inmates may receive beatings for engaging in the same offences. It was noted that Tribunal proceedings inside the prison were primarily initiated when inmates were found in the possession of contraband, while some prisons take inmates to court for an offence related to the possession of contraband as well as attempted escapes, as prescribed by the DSO Section 688. When inmates are caught in the possession of drugs, the Commission was informed that the police would be informed, which would result in criminal proceedings being instituted. Interviewees alluded that the discretion of the SP plays a fundamental role in the initiation of Tribunal court proceedings.

Although the SRs state the proceedings should be conducted within the prison⁴¹⁷, prisoners pointed out that the judge visiting the prison premises in order to try the inmate, instead of the inmate being produced in a court, might adversely impact impartiality. Even though a number of practical and logistical obstacles may arise in transferring prisoners to court for a Tribunal proceeding, such a practice would reinforce the inmate's right to a fair trial and the presumption of innocence.

The Commissioner of Administration and Intelligence at the time informed the Commission that although there is no legal provision in the PO or subsidiary legislation which gives the prisoner the right to legal representation, given that prisoners may have their sentence increased by the Tribunal, the prisoner is allowed to hire a lawyer to represent them before the Tribunal. Interviewees, however, stated that the cost of legal fees, which is burdensome on remandees who have ongoing cases and are already paying for legal representation, as well as convicted inmates who stated they had already spent a considerable amount of money on legal assistance during their trial, prevents them from retaining a lawyer who will charge higher fees to attend the Tribunal proceedings in prison. In fact, inmates were not always aware that they are allowed to hire a lawyer during Tribunal proceedings, until inquired by the Commission during interviews. As a male convicted prisoner at KRP stated:

“They don't even grant us the opportunity to have the case outside in an ordinary court when we request. Such permission is very rarely granted. If it is in a court outside, we can get a lawyer for 2,000 or 3,000 rupees but to get a lawyer to come here would cost 10,000-15,000 rupees per day since they have to leave their ordinary work and come here. It is very rare to see people doing that”.

Hence, being tried in a prison may undermine the prisoner's right to the presumption of innocence, and the inmate may become more vulnerable without legal representation in front of a judge, the SP and prison officers.

⁴¹⁷ SRs 1956, s 273.

9.3. Due process issues

Sections 704 of the DSO and 273 of the SRs stipulate that the inquiry against an accused prisoner should involve the prisoner being present during the whole investigation and he or she should be ‘allowed every opportunity to place his defence before the Superintendent’.

Allegations were made that judges gave more value to the opinion of the SPs where the awarding of punishment is concerned, rather than adopting a neutral and objective position, thereby creating an impression amongst prisoners that prison officers decide the punishment instead of judges. Inmates reportedly feel judges simply consult the written report prepared by the prison administration, without allowing the inmate to provide an explanation. Multiple accounts were received of inmates not being questioned or allowed to defend themselves before a decision is made. Interviewees frequently mentioned that as a result of this, prisoners who were simply in the wrong place at the wrong time could potentially receive a penalty without being party to the offence. Interviewees also informed the Commission that this made it quite easy for an inmate to frame his or her adversary, by placing illegal items in their possession, which was described by a condemned inmate at KRP:

“It is therefore not an impartial inquiry. Their only point of view is that it was found in this room and the individual was housed there at the time. That is their only argument, they have no other argument. Like how did it get there or anything like that. They came and showed it in front of my face. Then that is it. They filed a case against me.”

The right of the prisoner to enjoy due and fair process is further jeopardized because the Visitors appointed to be part of the Tribunal by law are not usually in attendance. As expressed by a prisoner at KRP:

“The Prison Tribunal is operated by the prison, and only the judge comes from outside. The others present are prison officers. According to my knowledge there has to be a monk, a Principal and a Justice of the Peace. Such people come to Welikada but in places like this, what happens is the prison officers give the judge a cup of tea and tell him what needs to be done. I told them I don’t have a phone, or a SIM or the financial ability to own a phone, but they were like it is my pillow and so it is my phone. So, they file a case for that. Then the SP told me it was better to plead guilty rather than going to courts because I would receive a conviction for two years but if I just plead guilty the conviction would be just two weeks or one month. I pleaded guilty as per his command. I was punished for six months.”

The lack of due process safeguards and fair investigations could result in unlawful detention when a prisoner’s sentence is extended, without the inmate’s culpability being proven beyond reasonable doubt. Since details of the Prison Tribunal proceedings will be recorded in the individual’s file, it could potentially reduce their chances of receiving a pardon, remission or early release through license board, as good behaviour is a criterion used to

assess eligibility for such benefits. Multiple interviewees stated they were asked to plead guilty by the SP or the judge with the promise of a reduced sentence in order to expedite case proceedings. While a guilty plea may result in the award of a shorter sentence, a punishment imposed for a prison offence will reduce the inmate's remission marks and even affect an inmate's evaluation before any pardoning committee or license board, thereby reducing their chances of securing a chance to go on home leave or early release from prison. Such a potential risk thus makes it imperative that a prisoner is provided the opportunity to fight their case, with all due process safeguards in place to ensure justice is served. The fact that a sentence extension imposed under Section 81 by a Prison Tribunal cannot be appealed⁴¹⁸ strengthens the argument for a prisoner being tried in a court of law for committing a prison offence, with access to a legal representative, or legal aid if he is unable to afford legal representation.

10. General observations

The Commission observed that the existing system of maintaining discipline in the prison is inherently violent and prisoners testified to the use of physical force and abusive language by prison officers to maintain order in the prison as the norm. As the quantitative data indicates, the infliction of violence by prison officers was reported to be higher in remand and closed prisons, where overcrowding in closed quarters risks order in the prison. Comparatively, open prisons and work camps which hold fewer prisoners, most of whom are nearing the end of their sentences and are considered to be rehabilitated, reported lower use of physical punishments.

The use and possession of contraband has often been cited as a reason for being sanctioned, but physical punishment would typically be inflicted on persons at the bottom of the chain, who are not responsible for the smuggling or distribution of contraband in prison, but may be found possessing small quantities. Punishing such persons therefore does not assist the objective of preventing contraband from entering prison, especially when prison officers are widely implicated in the trade of contraband in prison.

The reasons for the widespread use of force by prison officers are that officers are not aware of non-violent means to maintain order and exercise power, nor have they received training in the reasonable use of force, in a manner compliant with international standards of necessity and proportionality. Furthermore, prisoners and officers both indicated that the difficult working conditions in prison and the adverse impact it has on their personal lives, leads to them release their frustration on prisoners using physical force. Hence, without parallelly improving the working conditions of prison officers, the level of ill-treatment imposed on prisoners cannot be countered.

Ward transfers and solitary confinement in punishment cells were other sanctions imposed on prisoners as observed in all institutions. It was noted that the conditions of punishment cells in many prisons could amount to inhuman and degrading treatment, and prolonged

⁴¹⁸ ibid s 84.

terms in closed confinement, especially solitary confinement, could pose serious risk to a prisoner's mental health condition.

As reported from many prisons, the frequent presence of the Commission has had the effect of curbing violence in certain prisons, as officers reportedly fear they will be summoned for inquiries by the Commission. This indicates that if disciplinary sanctions against officers are employed by the prison as part of a zero-tolerance policy against violence, or prosecutions are initiated under the Torture Act, it could deter prison officers from resorting to physical violence.

The main method through which sanctions are imposed on prisoners is through the Prison Tribunal. Prison Tribunals can risk creating the appearance of bias if they are conducted on the prison premises, especially considering the allegations made by prisoners that judges follow the direction of the SP and prison officers and the accused prisoner is not allowed to adequately explain themselves. Prisoners do not have access to legal representation when they are presented before the Tribunal, as lawyers would charge higher fees to come to the prison. Thus, a prisoner's sentence can be extended by the Prison Tribunal and they can be further deprived of liberty without adequate adherence to due process standards.

15. Death in Prison

"The physical infrastructure of a place of detention, the detainees' sleeping arrangements and bedding, what they wear, eat and drink, their access to fresh air, daylight, toilets, washing and laundry facilities, their working conditions, whether they can exercise, meet their families, receive information on their case, be intellectually stimulated: all of these have an influence on their physical and mental health. When conditions of detention are seriously inadequate, they can, either immediately or over time, constitute a danger to life."

ICRC Guidelines 2013, p 22.

1. Introduction

Article 3 of the Universal Declaration of Human Rights (hereinafter referred to as UDHR) states, 'Everyone has the right to life, liberty and security of person', while Article 6(1) of the ICCPR states 'No one shall be arbitrarily deprived of his life'. Article 4(2) of ICCPR recognizes right to life as a non-derogable right which must always be fully respected and implemented under all circumstances.

Although the Constitution of Sri Lanka does not explicitly recognise the right to life as a fundamental right, this has not prevented the Supreme Court of Sri Lanka from interpreting Articles 11 and 13(4) to implicitly recognise the fundamental right to life. In *Sriyani Silva v. Iddamalgoda* the Supreme Court held:

'Articles 11 and 13(4) by necessary implication recognize the right to life. Hence, if a person died by reason of torture or unlawful death (by the executive), the right of any person to complain against violation of a fundamental right guaranteed by Article 17 read with Article 126(2) should not be interpreted to make the right illusory; but Article 126(2) should be interpreted broadly especially in view of Article 4(d) which requires the court to 'respect, secure and advance' fundamental rights.'⁴¹⁹

The right to life is both a negative and a positive right. It imposes an obligation upon the state to abstain from arbitrarily depriving individuals of life and compels states to adopt mechanisms to ensure that no one is arbitrarily deprived of life. When persons are held in prisons, the responsibility of the state, and prison authorities in particular, as their custodian under the law, to ensure both the positive and negative rights are protected is amplified. Therefore, it is essential that we examine the legal and procedural framework in existence regarding deaths of prisoners in custody. Death is understood as the 'irreversible cessation of all vital functions, including brain activity'.⁴²⁰

⁴¹⁹ 63 [2003] 2 Sri LR, Sriyani Silva vs. Iddamalgoda, Officer in Charge, Police Station Paiyagala and Others, SC No. 471/2000 (FR), p 64.

⁴²⁰ ICRC, Guidelines for Investigating Deaths in Custody (ICRC, October 2013), p 8.

According to the Guidelines for Investigating Deaths in Custody published by the International Committee of the Red Cross in October 2013 (hereinafter referred to as the ICRC Guidelines), death is ‘natural’ when it is caused solely by disease and/or the aging process. It is ‘unnatural’ when its causes are external, such as intentional injury (homicide, suicide), negligence or unintentional injury (death by accident).⁴²¹ This distinction is used in this chapter, which discusses death in prison, focusing mainly on four types of unnatural deaths uncovered by the Commission during the Study, namely, death due to violence, suicide, inadequate medical attention and death by accident. The legal and procedural aspects regarding death in prison discussed first are applicable to every death that occurs in prison.

According to the DOP Statistics, ninety-eight deaths of prisoners occurred in the year 2018 compared to fifty deaths in the year 2017.⁴²² It must be highlighted that the DOP Statistics do not provide any information on the number of deaths that resulted from natural and unnatural causes, as described above. It should be noted that death by execution is not discussed in this chapter, as the death penalty has not been implemented in Sri Lanka since 1976⁴²³.

2. The procedures to be followed in the case of a death in custody

This section discusses the protocol to be followed when a death occurs in prison, including the authorities that should be notified, the records in which the death has to be documented, the process to hand over the deceased’s private property, and the method of conducting a funeral. The process of inquiring into a death in custody will be discussed in a separate section.

According to the ICRC Guidelines, anyone who discovers that a death in prison [‘death in custody’ is read as ‘death in prison’] has occurred, should immediately inform the administration. The administration should immediately inform the investigating authorities and take necessary measures to preserve the death scene and evidence, and to record preliminary details on the circumstances of the death. The Guidelines state that steps should be taken immediately to inform the next of kin. The prison must inform the investigating authorities of the identity of the deceased, his or her medical history, including any history of substance abuse and all other circumstances that may be of relevance to the investigation, and may help them respond effectively. It further states that gathering the listed information must not be used as an excuse for not reporting the death to the investigating authorities immediately. Each of these aspects will be examined below.

⁴²¹ ibid, p 8.

⁴²² DOP, *Prison Statistics of Sri Lanka* (Vol. 38 – 2019), p 79

⁴²³ For a detailed discussion on the death penalty in Sri Lanka, please refer to the chapter Prisoners on Death Row.

2.1. Preservation of the death scene

The ICRC guidelines stipulate that the scene of the death and evidence must be preserved by restricting access to the body and the surrounding area. Only a qualified MO, certifying the death should have access to the body at this stage. Neither the body nor the surrounding area should be touched until independent investigators and a MO properly document the scene. They too should not contaminate the scene and should disrupt it as little as possible. The body and associated evidence must not be moved and must be examined in situ by a qualified MO (ideally, a forensic pathologist) and by a qualified investigator, both of whom should be independent of the detaining authorities.

In most cases, the prison administration will not be willing or qualified to declare a prisoner dead, but instead would transfer the deceased to the PH to be examined by a medical practitioner. This has the effect of disrupting the site of the death and even potentially contaminating important evidence. For instance, there will be no photographic evidence of the state/position in which the body was found, if the deceased is immediately taken to the PH, thereby seriously compromising the investigation of the death.

The Commission was informed by officers of WCP that in case of a death by unnatural causes, such as suicide or homicide, the MO will be summoned to the prison and their direction followed, but this was contrary to what the Commission was informed by prisoners and what was observed. For example, in the instance of a suicide by hanging in KRP in December 2018, it was said by the SP that the MO of the PH was not on duty when the suicide was discovered, and the person/body was taken to the Rathnapura General Hospital immediately. Moreover, it was revealed that three other inmates from other wards assisted the officers to cut the rope and release the body, all of which does not adhere to the aforementioned procedure. The transfer of the inmate to the hospital, without the express direction of a medical professional could risk contamination of the site of death and preservation of key evidence, including and especially evidence of the state in which the body was found.

The Commission was informed that in cases of natural death in which the body is taken to the prison hospital and the inmate is declared dead by the MO at the hospital, the body will not be moved until the Magistrate arrives at the prison. Although the Magistrate is required to come to the prison as soon as the notification of the death has been conveyed, in practice, there may be delays.

2.2. Notification of death

To the prisoner's family:

SMR 69 states that in the event of a prisoner's death, the prison director [SP] shall at once inform the prisoner's next of kin or emergency contact. It is one of the key revisions made to the SMRs in 2015, as previously the rule required the prison director to inform 'the spouse, if the prisoner is married, or the nearest relative'. In national law, Sections 26 of the PO and 86 of the SRs state that the jailor should inform the SP who in turn will inform the nearest

relative of the deceased by telegram and letter, when practicable. Section 393 of the DSO states that the SP should take steps to inform the relatives without stipulating the time period within this should be done.⁴²⁴ An ambiguity occurs due to the phrase ‘when practicable’, as it leaves room for the SP not to inform the relations at once, as mandated by SMR 69. However, it was observed by the Commission that, in practice, prison administrations almost always take immediate action to inform the deceased’s relatives of the death.

Prison administrations island wide were observed completing either the Prison 8 form (for remandees) or the Prison 17 form (for convicted prisoners), which contain a section for the address of the next of kin (entry number 5), but not the telephone number, for every prisoner upon their admission to prison.⁴²⁵ The Commission was informed that, since the prison requests only the home address of prisoners and does not request the telephone number of the prisoner’s next of kin or emergency contact, the prison authorities are not in a position to notify the deceased’s next of kin themselves. Instead, the prison typically informs the police station in the area in which the prison is situated. The police will convey the message to the police station in the vicinity of the relative’s residence and that police station would then locate the residence and notify the relatives of the deceased. The prison may send a letter of notification after the family has been located by the police. Difficulties in informing the family arise in instances where the prisoner has not provided their family contact information or provided wrong information, or the information provided has become obsolete. As already discussed, prisoners are reluctant to provide accurate family contact information to the prison, as the security of the information provided is not guaranteed and is easily accessible by other prisoners/officers and subject to the risk of appropriation⁴²⁶.

Officers of WCP stated that if the prisoner dies at the NH, the hospital will inform the prison and it will be recorded by the telephone operator in the incoming telephone message register. The hospital will also inform the police post at the hospital provide them with the details of the prisoner’s next of kin. The police post will then inform the Borella police station, which will notify the respective police station in the area in which the family of the prisoner live, which will inform the deceased’s family members.

The ICRC Guidelines mandate that the next of kin should be accorded due dignity and treated with respect.⁴²⁷ The investigating authorities should inform the family about the investigation that is due to be or is already being undertaken, and should also report regularly to the next of kin on its progress. If an autopsy is to be performed, the next of kin

⁴²⁴ DSO 1956, s 393.

⁴²⁵ Prison Form 8 or Prison from 17 does not include a place to note the telephone number. However, the Commission has observed that the family member’s telephone number has been mentioned in these forms on rare occasions. Upon inquiry, officers stated that it is not general practice to ask for a telephone number since the form only requires them to state the address, and also inmates are reluctant to provide a telephone number, since many people working at the RC – officers and party inmates – have access to these details, and inmates fear that calls would be made to their family members that could amount to harassment or abuse.

⁴²⁶ For a detailed discussion on the collection and storage of prisoners’ personal information, please refer chapter Entrance and Exit Procedure.

⁴²⁷ ICRC Guidelines 2013, p 20.

should be informed in advance of the date and offered the possibility of being represented at it. However, domestic legislation/regulations do not require the family to be regularly updated on the progress of the investigation nor to be provided with the opportunity to be present at the autopsy. The Commission did, however, observe that the family of a recently deceased at WCP had been informed about the post-mortem examination at which they were present. The ICRC Guidelines further states that counselling services and therapeutic support, if available, should be offered to the next of kin⁴²⁸, a practice which is unheard of in Sri Lanka.

To other authorities:

In addition to relatives, Section 26 of the PO and Section 86 of the SRs state that the Jailer should give immediate notice to the SP, who will then inform the CGP and the Magistrate with jurisdiction over the area in which the prison is situated (Section 396 of the DSO states the same). Officers at WCP stated that when a death occurs at WCP, the OIC of the Borella police station is notified at once and the Borella police inform Colombo Magistrate Court No. 02. In WCP, the Commission was informed that when the police were once informed of a death the night it occurred, the police had come to the prison and had restricted access to the death scene. Similarly, the CJ at KRP stated, regarding a suicide that took place a few months prior to the Commission's visit, that as soon as it was discovered, at around 1845h, the police were informed and the court was notified. Similarly, Section 398 of the DSO states that the death of a prisoner who is on remand or who is an appellant or who has another case pending against him will at once be reported to the court concerned.

According to the officers at WCP, the CGP, the Media Unit and the K Branch at Prison Headquarters are also notified of deaths immediately.

Section 86 of the SRs states that if the death occurred in a prison other than that to which the prisoner was first admitted, the SP of the first prison should also be notified of the death for him to note it in his Admission Register.⁴²⁹ Section 393 of the DSO states that the prisoner's sheet and the register should be closed and signed after a death.⁴³⁰ Section 86 of the SRs further states that the death of a convicted criminal prisoner (under the Prevention of Crimes Ordinance) should be reported to the Registrar of Fingerprints.⁴³¹ Section 395 of the DSO states the same, mandating the jailor to send a death report to the Registrar, as soon as possible after the death.⁴³² When inquired about the practice followed, the officers at WCP mentioned that the Fingerprint Registrar is informed often only in the case of an island reconvicted criminal⁴³³ (hereinafter referred to as IRC) inmates when the court case regarding the death is over, and the cause of death is determined.

⁴²⁸ ICRC Guidelines 2013, p 20.

⁴²⁹ SRs 1956, s 86(2)

⁴³⁰ DSO 1956, s 393.

⁴³¹ SRs 1959, s 86(3)

⁴³² DSO 1956, s 393.

⁴³³ Island Reconvicted Criminal refers to offenders that are registered on the IRC List for being incarcerated at least twice for committing serious criminal offences and therefore classified as dangerous.

2.3. Recording a death

SMR 8(f) requires information on the circumstances and causes of death and the destination of the remains to be entered in the prisoner file management system. It was observed by the Commission that this information is included in the Preliminary Inquiry File, which is compiled for every death in prison. The contents of such a file will be discussed in detail in the section on investigations into deaths in prison.

It should be noted that the Commission observed instances where the location of the grave had not been recorded in the file. When queried about this, the officers of the WCP Marks Branch mentioned that marking the gravestone is not their duty. Usually, if the family of the deceased does not have a family cemetery or a particular place in mind for the burial, the court issues an order on the request of the family, requiring the deceased to be buried in a particular public cemetery. As a practice, the court sends a copy of the burial order to the relevant prison. If such is sent, the Marks Branch files it, otherwise the prisons do not seek/ask for the order, and hence its absence in the file. In addition to preliminary inquiry files, in WCP, a Death Logbook and Death Files were observed. The Commission noted that there is no uniformity in the types of records maintained- for instance at some prisons only preliminary inquiry files and preliminary inquiry logbooks were observed, with no death logbooks or death files (ex. WWC), while some prisons maintained a death logbook (ex. KGRP).

Section 160 of the DSO mandates nurses to maintain separate Day Occurrence and Night Occurrence Books, in which all important incidents that occur during the day and night have to be recorded. It was revealed upon inquiry that there is a Day and Night Record Book at the main Welikada PH, in which the name of the doctor on duty at the time of death, date and time, prisoner's name and number are included. When asked about where entries of death would be recorded, the officers at the WCP Marks Branch mentioned that every death is recorded in the Death Logbook (known as RCD 19) kept at the Marks Branch. It contains the inmate number, name, date of death, place of death, death inquiry court case number, whether the CGP was informed, cause of death and whether the death certificate has been issued. However, the Commission observed the logbook was incomplete with many columns incomplete, including the column which records whether the CGP was informed.

The Commission also observed that in all prisons visited, the death logbook would almost always state that the inmate died in the GH. However, many prisoners have informed the Commission that often prisoners die in the ward and it is the body that is taken to the GH. This practice, if true, will result in the non-identification of the place of death, which consequently obscures delays that might have taken place in receiving medical assistance/sending the deceased to a hospital. If such delays are obscured, the prison administration will not be held accountable for the delays, which were a contributory cause of the death, thereby fostering the continuation of such delays. However, upon inquiry, officers at the Marks Branch informed the Commission that prison authorities cannot declare a person dead, as that responsibility solely lies with a medically trained doctor, which is the reason they cannot enter the prison as the place of death if an authorised medical personnel did not declare the prisoner dead inside the prison.

The SM Branch maintains a special incidents record book, which mentions deaths by suicide with the particulars of such (ex. by hanging) but no other deaths. For example, if a riot were to happen, the special incidents book would mention that such occurred, but would not mention the names of those who may have died as a result of it. The Death Logbook on the other hand records the names of those who died - for instance, the Commission observed that the Death Logbook at WCP mentions the names of the prisoners who died in the 2012 riot that took place in WCP. An entry will be made in the Gate Book in addition to the In and Out Logbook at the Gate when the body or a prisoner suspected of having died or is on the deathbed is taken out of prison. When queried whether the Prisoner Information Management System is updated to record deaths, the officers mentioned that it will not be updated since usually a death is confirmed at the PH and the PH does not have access to the Information System to update the system.

WCP Marks Branch officers mentioned that they maintain death files of deceased prisoners in the Marks Branch rather than send them to the Record Room, due to the ease of retrieval. Death files since 2002 were said to be stored at the WCP Marks Branch. Typically, such a file would usually contain the prisoner's personal file (Prison form 08 or 17), a copy of the death certificate and a copy of the JMO report/cause of death certificate and sometimes the Magistrate's order to conduct a post-mortem and statements by the family. In the case of a person who, for example, died due to violence in prison, it would also contain the letter which informs the court at which there is an on-going case regarding the death, the letter informing the Headquarters about the death, the letter informing the OIC of the relevant police station etc. These files are not to be confused with the Preliminary Inquiry files, which are maintained at the SM Branch of each prison, which often contain some of the documents that are also in death files.

It was observed by the Commission that in WWC, the prison administration had not documented the details of the preliminary inquiry conducted into a death due to an accident at the work party. When specifically queried about it, the officers mentioned that all the preliminary inquiries conducted are recorded, and specifically mentioned that a preliminary inquiry is conducted regarding every death. However, there was no mention of the said death in the preliminary inquiry logbook and based on the records at WWC, it appeared as if such a death had not occurred at all.

In addition to the above, Sections 61 and 62 of the SRs mandate the MO to forward monthly and annual returns of sickness and mortality in the prison under his charge to the Director of Health Services. However, DGHS Dr. Anil Jasinghe stated to the Commission that not all MOs assigned to prisons follow this procedure.

3. Investigation of a death in prison

The investigation of deaths and torture in custody is one of the nine thematic areas of SMRs that were revised in 2015. Independent investigations are now expected in all cases of

custodial death as well as in other situations of serious concern.⁴³⁴ In addition, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that when circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The ICRC Guidelines state that, the prohibition against the arbitrary deprivation of life, read in conjunction with the general obligation to respect and ensure human rights within the State's jurisdiction, has been interpreted as imposing by implication an obligation to investigate alleged violations of the right to life. The ICRC Guidelines further state that a proper investigation into deaths that occur in prison serves several purposes⁴³⁵:

- It assists the bereaved by providing objective and timely information and helps them obtain death certificates;
- It contributes to dispelling concerns about inadequate care or foul play when the death was due to natural causes;
- It is indispensable when a criminal investigation is required; and
- It provides information that is essential to prevent such deaths in the future.

The investigation procedure in operation in prison is examined to assess whether it fulfils the above-mentioned aims.

According to the ICRC Guidelines, the investigation should first establish the facts surrounding the death, namely the identity of the deceased, the cause and the manner of death, the location and time, and the extent of involvement of all those implicated in the death. The Guidelines further state that the investigation should determine any pattern or practice that may have brought about the death, which will be useful in preventing the recurrence of unnatural deaths in prison through the adoption of preventive measures. The investigation may contribute to reducing trauma and providing an effective remedy for the next of kin, including prosecuting and punishing those responsible.

As per the ICRC Guidelines, in suspected cases of arbitrary deprivation of life, the investigation should include the following: all relevant physical and documentary evidence, namely statements from witnesses and a proper autopsy.⁴³⁶ Failure to interview and seek evidence from key witnesses may be sufficient reason to consider the investigation seriously inadequate. It further mentions that the investigation should include some degree of public scrutiny and its conclusions should be made public. In addition, the next of kin should be involved in the process and they should receive legal assistance, have access to the case file, and take part in the proceedings where applicable. According to the said Guidelines, there are three types of investigations: preliminary investigation, judicial investigation and non-

⁴³⁴ United Nations Office on Drugs and Crime, *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): An Updated Blueprint for Prison Management in the 21st Century* (2015)

⁴³⁵ ICRC Guidelines 2013, p 7.

⁴³⁶ ICRC Guidelines 2013, p 13.

judicial investigation by an independent entity.⁴³⁷ These three types of investigations will be examined below.

3.1. Preliminary investigation

According to SMR 71, an internal investigation conducted by the prison administration is mandatory for every death that takes place in prison and should be undertaken *suo motu*, i.e. of the prison authorities' own volition, once the case has come to their attention, regardless of whether a formal complaint has been lodged, and should be carried out as promptly as possible.⁴³⁸ In line with this, the ICRC Guidelines state that a preliminary investigation should be initiated by the head of the custodial facility [i.e. the SP], immediately after the discovery of the death and⁴³⁹ the death scene and evidence must be preserved and preliminary details of the circumstances of the death recorded. The Commission observed prison authorities adhering to this requirement by conducting a preliminary inquiry in every case.

In addition to the preliminary inquiry conducted by the place of detention/incarceration, international guidelines require that independent and impartial investigations are conducted into custodial deaths and 'the authorities in charge of the investigation must have no relationship, institutional or hierarchical, with persons or agencies whose conduct has to be investigated'.⁴⁴⁰ Thus, the prison is required to notify the investigating authorities as soon as practicable and remain in control of the scene until relieved by an authorized officer. The authorities who had the custody of the detainee must submit a detailed report of the preliminary investigation to the investigating authorities. In this case, the independent investigation is conducted by the police, at the direction of a Magistrate, and will be discussed in detail below under 'Judicial Investigation'.

It was stated by prison officers around the country that a preliminary inquiry is conducted by the prison regarding every death. In WCP, the CJ normally appoints a jailor to oversee the preliminary inquiry. The jailor would compile a Preliminary Inquiry file that would include information on the circumstances surrounding the death to be forwarded to the Prison Headquarters. The Commission was informed by officers of WCP that if the doctor certifies it was a natural death, a 'detailed' preliminary inquiry would not be conducted; if the circumstances of the death suggest it was due to unnatural causes, then further statements from witnesses will be obtained.

After the internal preliminary inquiry is over, the preliminary inquiry file is sent to the K Branch at the Prison Headquarters. Over the period of the study, the Commission examined a number of preliminary inquiry files on deaths in prison and the following documents are typically found in such a file:

⁴³⁷ ICRC Guidelines 2013, pp 9, 10.

⁴³⁸ ICRC Guidelines 2013, p 13.

⁴³⁹ ICRC Guidelines 2013, p 9.

⁴⁴⁰ ICRC Guidelines 2013, p 13.

- The letter informing the Prison Headquarters about the death - this letter would usually contain the name and prison number of the prisoner, their age at the time of death, the court which imprisoned him and the case number, the charge against the prisoner, the date s/he was imprisoned, the length of the imprisonment, release date/next court date, date of the death, the place and time of the death, special remarks⁴⁴¹ and whether the family was informed of the death. The letter would also state that the preliminary inquiry file will be sent to HQ upon the completion of the inquiry, and stipulates to which Magistrate's court and police station the death was informed.
- Letter informing the police station which has jurisdiction over the prison.
- The order by the SP to conduct a preliminary inquiry and the report of the jailor who conducted the preliminary inquiry.
- The letter by the prison administration requesting the Magistrate to arrange a post mortem examination and the Magistrate's order to the JMO to conduct a post mortem and return the body for it to be handed over to the relations.
- Cause of Death Certificate/Post Mortem Report by the JMO.
- Statements of prison officers and prisoners involved - often providing details of when they learnt about the death, their observations of the last moments of the deceased and the time at which the deceased was admitted to the hospital/taken out of the prison.
- Certified copies of supporting documents, such as the Gate Book and the In and Out Book, the list of officers on duty on the day of the death etc.
- Statement from the deceased's relatives confirming whether or not they hold suspicions about the cause of death and if they accept the decision of the JMO as well as confirmation that they have taken custody of the body. The relationship of this individual with the deceased and the location of the resting place/name of the cemetery would also be mentioned, sometimes along with a provisional sketch of the gravesite.
- Prisoner's personal file – Prison Form 8 or Prison Form 17

Based on the documents found in the preliminary inquiry file, the inquiry conducted by the prison authorities, is at best, a reporting mechanism to document the circumstances of the death and forward it to the Prison Headquarters for record purposes. The preliminary inquiry, as evident from the usual contents of such a file above, would not necessarily contain a conclusion or assessment of the cause of death, although the eventual judicial conclusion

⁴⁴¹ The format lists the followings under 'special remarks': suicide/assault/falling down/illnesses/other.

may be added to the file for recording purposes if the prison is in receipt of it. Thus, the preliminary inquiry does not analyse the event in order to uncover patterns or practices that may have brought about the death and action that should have been taken to prevent certain types of death, such as suicide. The officers at WCP informed the Commission that this process is completed as part of a formality to inform Prison Headquarters and is not considered to be a substantive investigation.

This is contrary to the purpose for which such inquiries are deemed useful, as it is integral for the prison administration to identify and evaluate the circumstances of death, so as to decide what resultant action can be taken to ensure future safety of prisoners.

3.2. Judicial investigation

SMR 71 states that notwithstanding the initiation of an internal investigation, the prison director shall report, without delay, any custodial death to a judicial or other competent authority.

The ICRC Guidelines state that a judicial investigation must be part of a criminal procedure involving the prosecution and punishment of those responsible, where applicable. When there are reasons to believe that the cause of death was homicide or negligence, police officials must conduct a full investigation, based on the preliminary investigation, to determine the cause of death and the extent of involvement of all those implicated in the death.⁴⁴² The prosecutor's office or some other appropriate body must coordinate the investigation process and transfer the case to a competent court.

Section 97 of the PO states that in case any Magistrate or inquirer shall hold an inquest on the body of any prisoner who has died while in custody, no prison officer or prisoner or person engaged in any trade or dealing with the prison shall be an assessor at such inquest. Section 396 of the DSO states that, on the death of a prisoner, the SP should, in terms of Section 363 of the Criminal Procedure Code, inform the Magistrate of the Court within the limits of whose jurisdiction the prison is situated to hold an inquiry into the cause of death by a Magistrate or Inquirer authorised by him.

The Commission observed that a judicial investigation is carried out for every death in prison, in addition to the preliminary inquiry. The court reportedly follows the procedure applicable in a criminal case, calling evidence from witnesses (prisoners/officers) etc. Usually, the police come to the prison first, then the Magistrate visits and inspects the place of death. The body cannot be moved until the Magistrate has conducted an inspection of the body.

As stated above, the officers at the WCP Marks Branch mentioned that they inform the Borella police station of the death, as it is the closest police station to the prison, after which the police inform Magistrate Court No. 02 in Colombo and a court case will be filed to obtain

⁴⁴² ICRC Guidelines 2013, pp 9, 10.

a judicial conclusion regarding the cause of death. The police conduct the inquiry for the court case and present evidence in court. The Police thereafter produce the body before the JMO to conduct a post mortem as per the order of the Magistrate. However, with regard to a recent death by suicide in KRP, it was mentioned by the SP that the Magistrate visited prison only on the day following the incident (the deceased was reportedly found at around 1845h). Such delays might affect the findings of the investigation.

The Commission was also informed that the DOP is the complainant in the judicial inquest into the death, and therefore it is imperative that a prison officer reports to every hearing that takes place with regards to the death, even in the case of a homicide where a criminal trial takes place. At WCP, the officer that was on duty when the death took place or went to the hospital where the prisoner passed away, will normally be tasked with attending court hearings. The officers may be required to identify the deceased or present a statement in court, based on the context of the proceedings.

Post-mortem examination

The ICRC Guidelines state that the threshold for undertaking a full forensic autopsy should be particularly low in the event of a death in custody. A full forensic autopsy should always take place unless the arguments against it are exceptionally convincing, explained thoroughly, and documented – for ex: the absence of a trained pathologist or opposition by the next of kin for cultural reasons.⁴⁴³ Further, a post-mortem examination is always necessary when evidence has to be collected for an investigation to ascertain facts and attribute responsibility. In cases of accidental death, determining the cause of death may contribute to preventing further loss of life.

The aim of a post-mortem examination is to determine and record the identity of the deceased; the estimated time of death; the cause of death (physiological processes, injuries, diseases, intoxication, etc.); the manner of death (natural, accidental, suicide, homicide, undetermined) and the sequence of events that may have led to the death.⁴⁴⁴ T

he ICRC Guidelines further mention that the autopsy must be carried out by an independent and impartial body and the next of kin should be permitted to have a medical or other qualified representative in attendance at the autopsy.⁴⁴⁵

WCP Marks Branch officers mentioned that a post mortem will be conducted in every case of death in prison, even in the case of Muslim prisoners who usually do not prefer to dissect the body, and a person who has been terminally ill for a long period of time. The Magistrate will issue the order for a post-mortem to be conducted after inspecting the body and the police implements it. The body will be handed over to the family of the deceased following the completion of the post-mortem examination.

⁴⁴³ ICRC Guidelines 2013, p 18.

⁴⁴⁴ Ibid

⁴⁴⁵ ICRC Guidelines 2013, p 13.

When the Cause of Death Forms issued by the Institute of Forensic Medicine and Toxicology were examined by the Commission, it was noted that the response for the question ‘Immediate Cause of Death’ (in the Form, the JMO has the option to write the cause/probable cause of death under three types: immediate cause of death/underlying cause of death/contributory causes for death) was often “under investigation”. In KGRP, the death record logbook stated ‘an open decision was given’ in the cause of death column in one case.

In instances where the cause of death was not conclusively determined, there is no indication whether further investigations were carried out to ascertain the cause of death. When inquired about this, WCP Marks Branch officers stated it was not their duty to ascertain the actual cause of death, which they stated lies with a court. This, however, does not absolve the prison administration from efficiently and accurately maintaining their documentation on the judicial investigation and conclusion in the case so a complete record of the case and resultant investigative findings are in the possession of the prison and DOP. The Commission observes that the manner in which information is recorded by prisons in the case of a death in custody is piecemeal. It does not aim to provide a complete and comprehensive account that enables lessons to be learnt, patterns to be identified, and practices devised to address them, particularly in the case of unnatural deaths.

3.3. Non-judicial investigation

SMR 71(1) states that notwithstanding the initiation of an internal investigation, the prison director shall report, without delay, any custodial death to a judicial or other competent authority that is independent of the prison administration and mandated to conduct prompt, impartial and effective investigations into the circumstances and causes of such deaths. The prison administration is expected to fully cooperate with that authority and ensure that all evidence is preserved. This is a key revision to SMRs in 2015.

The ICRC Guidelines state that a non-judicial investigation may be conducted by the authorities responsible for the place of detention or an ad hoc review mechanism, such as the national preventive mechanism established under the OPCAT, national human rights institutions, or ombudspersons’ offices. The Guidelines further state that a non-judicial investigation should not prevent judicial authorities from conducting their own investigation.⁴⁴⁶

The ICRC Guidelines require that the authorities in charge of the investigation must be independent and impartial; they must have no relationship, institutional or hierarchical, with persons or agencies whose conduct has to be investigated. In addition, their conclusions must be based on objective criteria, and must not be tainted by bias or prejudice of any kind.

The Human Rights Commission conducts investigations on unnatural deaths in prison, sometimes upon receiving a complaint or *suo motu*.

⁴⁴⁶ ICRC Guidelines 2013, p 10.

4. Private property of deceased prisoners

The ICRC Guidelines state that the personal belongings of the deceased should be returned to the next of kin as soon as possible.⁴⁴⁷ Section 394 of the DSO states that any money standing to the deceased's credit, including prison earnings, will be handed over to his legal heirs after the SP confirms that the claimants are the legal heirs of the deceased prisoner.

Officers at WCP mentioned that the deceased's private property would be handed over to relations if they claim them. Where earnings are concerned, they will be transferred only if the next of kin make an application, which calls into question the plight of the earnings if the family does not make an application.⁴⁴⁸

5. The funeral

SMR 72 states that the prison administration shall treat the body of a deceased prisoner with respect and dignity. It further states that the prison administration shall facilitate a culturally appropriate funeral, if there is no other responsible party willing or able to do so, of which it is required to keep a full record. The ICRC Guidelines state that the investigating authorities should hand over to the next of kin a complete death certificate as soon as possible and, on completion of all post-mortem examinations, the body should be returned to the next of kin in a manner that is fully respectful of the dignity of the deceased, so that funeral rites or other customary procedures can be conducted with the least possible delay.⁴⁴⁹

Section 23 of the SRs states that it is a duty of the SP to hand over the bodies of prisoners who die in prison, otherwise than by execution, to friends or relatives for interment as they think fit and that unclaimed bodies shall be buried in the place duly appointed by the Government for such burials. Even though it states the family can decide on the method of interment, the officers of the WCP Marks Branch mentioned that it should be a burial, presumably to facilitate future exhumations if needed.

WCP officers mentioned that the prison hands over the body to the relevant police almost immediately and the police hand it over to the relations, following a court order to that effect and upon the conclusion of the post-mortem. If there is no family to accept the body, the burial is done by the Government upon a Magistrate's order. Officers at WCP mentioned that confirming the deceased has no family usually takes about two months, as newspaper advertisements are published. Until such confirmation the body will be at the police morgue. Alternatively, family members of the deceased can request the burial to be done by the Government, in which case it is usually completed within fourteen days.

The Commission observed that the unnatural deaths reported to the Commission during the study period occurred due to four main causes, which will be discussed in detail below. A

⁴⁴⁷ ICRC Guidelines 2013, p20.

⁴⁴⁸ For a detailed discussion on prisoners' earnings and prison labour, please refer chapter Prison Work.

⁴⁴⁹ ICRC Guidelines 2013, p 20.

number of patterns emerged in the facts that were reported to the Commission by prisoners as well as prison officers, which point to numerous shortcomings on the part of the administration, underpinned by inherent structural and systemic issues, that played a contributory and possibly even causal role in the death of prisoners.

6. Death in prison due to violence

The Commission has come across credible evidence that *prima facie* suggested that the death of a prisoner occurred due to violence suffered in prison, either at the hands of prison officers or other prisoners. This section will also discuss the possibility of a death in prison occurring due to police violence.

SMR 30 states that a physician or other qualified health-care professionals, shall see, talk with and examine every prisoner as soon as possible following his or her admission and thereafter as necessary. Particular attention shall be paid to identifying any ill-treatment that arriving prisoners may have been subjected to prior to admission, among other things.

In national law, Section 43 of the PO mentions it should be done ‘as soon as convenient after admission’ and Section 159 of the SRs specifically states that it should be done within twenty-four hours. In addition, as stated in the Entrance and Exit chapter, Section 124 of the DSO mandates the MO to carefully examine new admissions to the hospital, make a thorough inquiry into the history of each case prior to admission and call on the jailor for any information regarding admission, or of ‘any other circumstances which may appear to have acted prejudicially on the prisoner’. A brief note summarizing the response of the jailor to the query of the MO should be made in the bedhead ticket when correspondence has terminated. It should be pointed out that such a query would only be made if a prisoner is admitted to the PH, and hence there would be no such note for persons who have suffered violence but are not admitted to PH. In fact, the Commission observed that most often, prisoners who have suffered violence or other injuries just prior to being sent to prison are not admitted to the PH and are instead left to tend to their injuries on their own, in the ward/cell or are given medication by the dispensary.

Medical examinations upon entrance are crucial as they place on record the injuries with which a prisoner entered prison. This could potentially assist the investigator in case the prisoner dies soon after entering prison, to determine the physical health of the prisoner when he/she entered the prison, and ascertain factors that caused their death thereafter. Section 124 states that the MO shall bring to the notice of the SP any unusual or irregular circumstances regarding the admission of a prisoner to hospital. When inquired whether they have taken such steps, MOIC at Colombo PH mentioned that they have never informed the SP about violence and the practice is to question the inmate, mark the anatomy chart and make notes. If the police, the court or the Commission were to request such records, the PH would provide them.

Principle 2 of Principles of Medical Ethics, states that it is a ‘gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel,

particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment'. Hence, inaction such as not recording marks of violence a prisoner bears during medical examination or admission to the hospital, would amount to a violation of medical ethics.⁴⁵⁰

6.1. Death in prison due to prisoner violence

During the course of this study the Commission was made aware of two deaths that occurred due to violence between prisoners.

In one case, a prisoner who was a witness to the incident stated that other prisoners in the ward kept calling for the officers nearby to inform them that a prisoner had been murdered, after the members of the ward heard shouting and observed blood on the clothes of the suspects.

In a statement to the Commission, one of the suspects stated he had repeatedly informed the SP that he was receiving death threats from the deceased who was held in his ward, and hence did not want to be housed in the same ward as the deceased. He alleged that the SP had ignored his entreaties. The other suspect in this case appeared to be suffering serious psychological distress and he showed the Commission a pill that is being given to him by the officers. The Commission did not find any record of his mental health condition in his file at the RC because such records are kept separately in his medical files, which had not been received by the prison he had been transferred to from the previous prison.

It was further revealed that one of the suspects had also threatened to commit suicide. Despite this, it was only when an officer of the Commission pointed out a cord made of cloth hanging from the suspect's solitary cell gate opening, and questioned the prudence of keeping it there, that the CJ instructed the officers to remove it. Upon inquiry, the PH doctor informed the Commission that no psychiatric evaluation of the suspect who threatened to commit suicide had been carried out, as the officers deem it is too risky to take him out of his cell. The Commission observed that an order by the SP was posted inside the duty officer's room, which stated that as per the court's instructions, the two prisoners must be monitored twenty-four hours, and that they are not to be taken outside of their individual cells for exercise together, and when they are taken outside, at least two officers must be present and the prisoners must be handcuffed. However, generally, the punishment cells, where the two suspects were being held, do not have a duty officer on watch twenty-four hours.

The victim of another incident of death caused by prisoner violence involved a person suffering alcohol/drug withdrawal symptoms after being admitted to prison. This prisoner, who had reportedly paid his fine to the court, was being further detained in the prison

⁴⁵⁰ For a detailed discussion on the role of medical personnel in preventing ill-treatment and torture in prison, please refer chapter Access to Medical Treatment.

because the prison officers had refused to release him as they were awaiting confirmation from the courts that he had settled his fine along with the release order.⁴⁵¹ The prisoner was reportedly lashing out when he learnt that he would not be released the same day despite paying his fine, and felt he was being detained arbitrarily, while reportedly also suffering from withdrawal symptoms.

The other prisoners in the ward, who did not know how to respond, reportedly resorted to the use of violence as a means of controlling the prisoner, which ultimately resulted in the death. A prisoner mentioned that the deceased, who was newly admitted to the prison was tied up by other prisoners and placed in the washroom area due to his disruptive behaviour⁴⁵² when he started protesting, breaking loose of his ties and beating other prisoners in the washroom area at night. This led other prisoners in the ward to beat him as a means of restraint. The Commission was informed that at this point, the inmates called out to officers and requested them to take the disruptive prisoner to the PH as he did not appear to be feeling well, a request which was reportedly ignored. Inmates informed the Commission that when a prisoner behaves in a disruptive and violent manner due to withdrawal symptoms, the usual practice is to tie the inmate and request the prison officers to admit him to the PH. In this case, the prisoner was found dead in the restrained position at dawn.

The inability of prisons to manage and treat prisoners with alcohol/drug withdrawal symptoms was observed to be a common factor in many cases of unnatural deaths in prisons, as will be discussed in the prison officer violence and deaths due to suicide sections.

6.2. Death in prison due to prison officer violence

According to the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions⁴⁵³ (hereinafter referred to as the Minnesota Protocol), deaths in prisons or detention resulting from torture or ill-treatment would constitute extra-legal or arbitrary execution within the definitions of the Minnesota Protocol.

SMR 71 requires an internal investigation whenever there are reasonable grounds to believe that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed in prison, irrespective of whether a formal complaint has been received. It was one of the key revisions to the SMRs in 2015. Steps are required to be taken immediately to ensure that all potentially implicated persons have no involvement in the investigation and no contact with the witnesses, the victim or the victim's family.

⁴⁵¹ It should be noted that inmates are not produced in court when fines are paid, as the procedure is for the court to inform the prison that the fine has been paid upon which the prisoner will be released.

⁴⁵² Prisoners often resort to sleeping in the toilet in overcrowded wards due to the lack of space. For a detailed discussion, please refer chapter Accommodation.

⁴⁵³ OHCHR, *The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016); The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* (OHCHR, 2017)

In national legislation, Section 15 of the DSO states that whenever complaints of ill treatment, assault or other irregularities on the part of officers are made, the SP should hold a brief personal investigation at the spot, ascertain the main facts and the names of the witnesses, if any, and should thereafter direct the Jailor to record the statements of the witnesses, if such action seems necessary. When inquired about the procedure followed when they are made aware of an incident of alleged officer violence, the MOIC at Colombo PH stated that they record the usual details and treat the inmate, and once they are cured send them back to the prison. MOIC at Colombo PH stated that when they inquire from the inmates whether they wish to take legal action, some inmates state they wish to file a case, and some do not. For those who want to pursue legal action, a report of the treatment prescribed and the details recorded will be issued, when requested by the courts.

The Commission was made aware of a death in custody which allegedly resulted from violence perpetrated by prison officers, where the deceased was reportedly suffering alcohol withdrawal symptoms and acting out as a result, and the suspected prison officer used physical violence as a means to subdue him.

This case and the one in the prisoner violence section where violence was used by prison officers and prisoners on inmates suffering from symptoms of psychological distress or illness, highlight the lack of mechanisms and processes in place at prisons to treat and handle inmates suffering substance dependency withdrawal or mental illness. Doctors are not available at PHs during the night and are rarely summoned despite the fact they are on call, while prison offices are not trained to deal with persons suffering withdrawal symptoms.

Moreover, prisons are not equipped with facilities to safely house a suffering inmate and prevent them from being a danger to themselves and to others, or even to prevent others from being a danger to such an inmate. The structural impediments, such as the severe staff shortage, which prevent the provision of individual attention to prisoners, coupled with the lack of medical care and severe overcrowding, where inmates who are in withdrawal are housed with hundreds of others in a cramped ward, exacerbate the reaction of officers and inmates, which in the aforementioned two cases resulted in violence, with extreme consequences. As discussed earlier, prison officers are not trained in restraining disruptive prisoners in accordance with human rights standards, and would instead resort to the use of physical force to maintain order.⁴⁵⁴ This would also enable prisoners themselves to respond in a similar manner where an inmate is engaging in disruptive and violent behaviour in the ward at night time.

The Commission reiterates that persons suffering withdrawal symptoms should not be admitted to prison where they risk becoming a threat to themselves or others, and should instead be administered treatment at a health facility.

⁴⁵⁴ For a detailed discussion on the use of physical force in prison to maintain discipline and order, please refer the chapters Discipline and Punishment and the Continuum of Violence.

6.3. Death in prison due to police violence

As mentioned previously, both international standards and domestic legislation/regulations provide for a medical examination to be conducted of prisoners upon admission. The timely occurrence of this is crucial in deciding whether an assault happened when the prisoner was in police custody or in prison, and to provide timely treatment to the victim, thereby preventing further deterioration of his condition.

The Commission observed that a separate logbook called the Police Assault Book to record physical ill-treatment suffered by the person prior to entering the prison exists in every prison. This Police Assault Book and the entries by the MO upon medical examination will be crucial in the event of a death of a person due to police violence following admission to prison.⁴⁵⁵ During the study the Commission did not come across any instances of the death of prisoners due to police violence after being admitted to prison.

7. Death in prison due to suicide

SMR 30(c) states that upon admission, every prisoner should be subjected to a medical examination to identify any signs of psychological or other stress brought on by the fact of imprisonment, including, but not limited to, the risk of suicide or self-harm and withdrawal symptoms resulting from the use of drugs, medication or alcohol, and all appropriate individualized measures or treatment should be undertaken. SMR 109 also provides for transferring of prisoners with severe mental health needs to specialised institutions under medical management and mandates the medical or psychiatric service of the penal institutions to provide for the psychiatric treatment of all other prisoners who are in need of such treatment.⁴⁵⁶

'Preventing Suicide in Jails and Prisons' published by the World Health Organization in 2007⁴⁵⁷ (hereinafter referred to as the WHO Report) and the UN Handbook on Prisoners with Special Needs⁴⁵⁸ (hereinafter referred to as the UN Handbook) state that, as a group, inmates have higher suicide rates than their community counterparts. According to the WHO Report, pre-trial detainees have a suicide attempt rate of about 7.5 times, and sentenced prisoners have a rate of almost six times, more than the suicide rate of males in the general population.⁴⁵⁹ It states that, on the one hand, people who break the law inherently have a lot of risk factors for suicidal behaviour (they 'import' risk), and on the other hand, being imprisoned is a stressful event even for healthy [previously non-suicidal] inmates. Further, the suicide rate is higher within the offender group even after their release from prison, and

⁴⁵⁵ For a detailed discussion of the Police Assault Book and shortcomings of the current practices, please refer the Entrance and Exit Procedure.

⁴⁵⁶ For a detailed discussion on treatment of prisoners suffering mental illnesses, please refer chapter Access to Medical Treatment.

⁴⁵⁷ World Health Organization, *Preventing Suicide in Jails and Prisons* (WHO, 2007)

⁴⁵⁸ United Nations Office on Drugs and Crime, *Handbook on Prisoners with Special Needs* (UNODC, Criminal Justice Handbook Series, 2009)

⁴⁵⁹ WHO Report 2007, p 3.

it means that these vulnerable offenders should be treated while they can be reached inside the prison.

In addition, the Handbook on Anti-Corruption Measures in Prisons published by UNODC⁴⁶⁰ states that persons are in a particularly vulnerable position at the time of admission, which may put them at risk of self-harm or suicide and therefore, the induction should provide reassurance that there is help and advice on how to seek and obtain the help they need to prisoners who are feeling overwhelmed. To that effect, it recommends the induction process includes: advice on coping in custody, including available sources of assistance such as legal aid programmes; how to access health-care services; whether there is special assistance for drug dependent prisoners; how to access facilities for religious observance; how to access other services, such as libraries or a prison shop; whether a “buddy” or peer support system exists, where prisoners help one another with settling in.⁴⁶¹

Section 69 of the PO requires prisoners suspected to be of unsound mind and/or suffering from mental illnesses to be transferred to a mental health facility, when there are inadequate facilities in prison to keep the person under observation or for diagnosing the disease. Section 31 of the DSO requires jailors and subordinate officers to take particular care of all prisoners who have attempted to, or show any tendency to commit suicide, and ensure that anything likely to be used for that purpose is removed from prisoner's reach or cell. Further, ‘they are also directed to take immediate steps to restore life to the best of their ability if an attempt at suicide has been made, and to send for a MO and the SP. Their first act should be at once to cut down the would-be suicide and to remove the rope or other article round his neck in cases of attempted hanging or strangulation’.⁴⁶²

The Commission did not observe mechanisms in place to identify or monitor prisoners with suicidal tendencies, which was affirmed by members of the prison administration. According to the UN Handbook, research in some countries indicates that prisoners who commit suicide ‘suffered from some form of mental disability or substance dependence (or both) on entry to prison’. This is demonstrated by a case of suicide that came to the attention of the Commission during the period of study, where the prisoner was both dependent on drugs and suffered mental health issues. In the case of the suicide at KRP, the remandee reportedly committed suicide on the day after his admission, illustrating that any monitoring that takes place upon admission can play a decisive role in preventing suicide. According to quantitative data gathered during the study, 7% of male prisoners and 4% of female prisoners admitted they attempted suicide while in prison.

The lack of continuous screening of prisoners for suicidal tendencies, even of those who have attempted to commit suicide before or have a known history of mental illness was observed at every prison. The non-existence of a suicide screening mechanism should be considered

⁴⁶⁰ UNODC, *Handbook on Anti - Corruption Measures in Prison* (UNODC, Criminal Justice Handbook Series, 2017), p 59.

⁴⁶¹ For a detailed discussion on the orientation programme in place in prisons, please refer chapter Entrance and Exit Procedure.

⁴⁶² DSO 1956, s 31

in the light of the fact that prison conditions tend to exacerbate or cause suicidal tendencies. According to the UN Handbook, 'long-term sentences, single-cell use, mental disabilities, substance abuse and a history of suicidal tendencies are associated with an increased suicide risk'.⁴⁶³

The UN Handbook mentions that around 15-20% of depressive patients end their lives by committing suicide and that 30% of patients diagnosed with schizophrenia had attempted suicide at least once during their lifetime.⁴⁶⁴ Further, more than 95% of those who committed suicide in prisons had a treatable psychiatric illness.⁴⁶⁵ The Commission noted that Sri Lankan prisons house prisoners with mental illnesses and the Commission has observed medically-declared depressive, schizophrenic and other patients suffering mental illnesses being held in prison, without receiving adequate treatment.

The UN Handbook mentions that prisoners who harm themselves may be considered at higher risk of attempting suicide than others as self-harm is associated with drug dependence, a history of alcoholism and with being a victim of violence, all of which require therapeutic responses.⁴⁶⁶ 11% of male and 7% of female respondents stated they had attempted to self-harm while they were in prison, but mechanisms to prevent or respond to such practices in order to protect prisoners' well-being were not observed. It was further observed by the Commission that self-harm and suicide attempts are penalized in some prisons (for example, in Wataraka Training School, YOs who self-harmed were said to be punished often, and in ACP those who attempted suicide were said to be placed in punishment cells with no clothes), causing further distress and leading to the worsening of any mental conditions.⁴⁶⁷

The Commission was informed of cases of suicides that occurred in prison during the course of this study that illustrate the importance of screening mechanisms. One such incident took place in KRP in December 2018 where, the deceased had been placed in the PH Special Cell, a ward with three separate unlit cells with a bulb in the corridor. Each cell has a rectangular shaped barred ventilation opening directly above the toilet in the cells. The deceased had been locked in one of the three cells with a few other inmates on the day of his admission and had been transferred to another cell to be kept alone on the following day, i.e. the day of the suicide. The reason for the transfer was a court order for the deceased to be detained alone as he was being subject to death threats inside the prison. The deceased hung himself using a cloth strip tied to the iron bars above the toilet, made out of his own bed sheet. The prisoners who were in the other cell mentioned to the Commission that the deceased was suffering from withdrawal symptoms when he was brought inside the PH Special Cell and they had helped him clean up and eat before he was transferred to the single cell.

⁴⁶³ UN Handbook 2009, p 16.

⁴⁶⁴ ibid

⁴⁶⁵ ibid p 17

⁴⁶⁶ ibid

⁴⁶⁷ For quantitative data on self-harm and suicide attempts in prison, please refer chapter Access to Medical Treatment.

One of the inmates who had been acquainted with the deceased mentioned that the deceased was prescribed medication by the prison MO for a mental illness when he was serving a previous sentence. When the Commission checked the PH records, it was discovered that during his previous sentence at KRP (according to the dispenser, the deceased had been remanded multiple times and had last been in prison on remand approximately five months ago) he had been on clozapine, a medication often used to treat schizophrenia/schizoaffective disorders as it decreases hallucinations and helps prevent suicide in people who are likely to harm themselves.⁴⁶⁸ Hence, this is a death that would likely have been prevented if there had been a mechanism whereby known prisoners with psychiatric conditions, especially those who had been on medication during previous prison terms, are assessed upon admission and administered medication if necessary. Moreover, safeguards that are deemed mandatory to prevent suicides in solitary confinement, such as removing items that could be used to commit suicide and MOs and prison officers monitoring the prisoner regularly, were not being practiced. Further, the deceased had been suffering drug withdrawal symptoms, which once again illustrates the inability of Sri Lankan prisons to manage prisoners suffering withdrawal symptoms.

Even in instances where patients at risk of suicide have been identified, delays in producing the person for the relevant examinations at the GH lead to the exacerbation of the condition. For example, during a visit to ACP in December 2018, the MO at the PH mentioned to the Commission that he once referred a prisoner for a psychiatric evaluation at a GH, yet the patient was not taken even after multiple referrals. The patient had thereafter attempted suicide and was saved only by a stroke of luck.

The officers of the Commission visited the said prisoner in the PH and upon talking to him formed the impression that he had been suffering from severe mental distress for a long time. The prisoner mentioned that he had habitually self-harmed and attempted suicide multiple times while at his previous prison. He mentioned he had requested a change of wards from the officers multiple times at the previous prison, as he believed he was being subject to sexual violence in his ward, but his requests were not heeded as officers thought it was "all in his head". To relieve himself of the humiliation and pain, he had started self-harming. He had been visiting a psychiatric clinic at his previous prison location and had been on medication for years, until he was transferred to ACP. The MO mentioned that the prisoner's previous medical records were not sent to ACP along with him when he was transferred, which prevented the MO from accurately prescribing medication.

Section 68 of the SRs states that, whenever a prisoner is removed on medical grounds to another prison, it is necessary with a view to assist the judgement of the MO of the establishment to which he may be sent, that a full history of the case, and of the treatment which has been administered shall be transmitted to him by the MO of the prison from which such prisoner is removed. Moreover, Section 140 of the DSO states that Medical History Sheets should be transferred directly from the MO of the prison from which a prisoner is transferred to the MO of the prison to which he goes, thus avoiding any divided

⁴⁶⁸ WebMD, 'Clozapine ODT' <www.webmd.com/drugs/2/drug-5200/clozapine-oral/details> accessed 5 January 2019

responsibility. According to the same inmate, he had been on sleeping pills prescribed by the MO for three days and on the fourth day the dispenser had stated he needed to wait until the doctor prescribes it again in order to be given more pills, and on that day he had attempted suicide by hanging.⁴⁶⁹ He was taken to the GH and was kept there for two days. He refused to eat in the GH and the GH doctor had asked the prison officers to take him back to prison. When the Commission visited him, he was chained to a bed by his leg and was lying on a mattress on the floor. “I can hear the worms in my stomach talking when I eat, sometimes they talk very loudly,” he said.

The MO at ACP mentioned that the medical records of many prisoners who had been transferred to ACP had not yet been sent to ACP, even months after the transfer, resulting in delays in administering treatment. In this case, such an administrative failure almost resulted in a death. The MOIC at WCP PH mentioned that there are plans to methodically screen all prisoners for mental illnesses and conduct awareness campaigns for prisoners, and for officers on humane treatment of mental health patients.

8. Deaths in prison due to inadequate medical attention

The SMRs require all prisons to facilitate prompt access to medical attention including, by ensuring that medical facilities within the prison are adequately staffed and equipped and by transferring prisoners to external medical facilities, as required.⁴⁷⁰ The SMRs affirm that clinical decisions may only be taken by responsible health-care professionals and may not be overruled or ignored by non-medical prison staff.

Similarly, national legislation requires prison administrations to efficiently facilitate the access of prisoners to medical attention within the PH⁴⁷¹ and at the GH⁴⁷², as required. Section 54 of the DSO states that if a prisoner is taken ill suddenly during night time the officers should at once take steps to communicate with the officer in charge of Night Duty and report the matter to him.⁴⁷³

During the course of this study, many allegations were made by prisoners that deaths of inmates have occurred due to the delay in providing them medical attention when they were sick or when they suddenly fell ill, especially at night-time.⁴⁷⁴

Section 132 of the DSO states ‘...the health of the prison cannot be maintained by well-meant but judicious efforts to keep a prisoner as long as possible out of hospital. Such action can

⁴⁶⁹ For a detailed discussion on the delay in transferring medical records of prisoners, please refer to chapter on Access to Medical Treatment.

⁴⁷⁰ SMR 2015, r 27

⁴⁷¹ PO No.16 of 1877, s 66

⁴⁷² ibid, s 69

⁴⁷³ For a detailed discussion on the provision of medical care and causes of possible deaths due to lack of access to medical care, please refer chapter Access to Medical Treatment.

⁴⁷⁴ For a detailed discussion on the lack of access to medical treatment in emergencies and at night, please refer chapter Access to Medical Treatment.

only result in prolonged detention in hospital, and perhaps an increased death rate'. Yet, in practice, it was observed by the Commission that prisoners in need of medical treatment are often kept out of the hospital for long periods of time due to infrastructural and human resource challenges, such as severe staff shortage to accompany prisoners to hospital and provide security at the hospital and the shortage of vehicles or lack of ambulances.⁴⁷⁵

Section 21 of the PO requires the MO to record in writing the following on the death of any prisoner:

- (a) When the deceased was taken ill;
- (b) When the MO was first informed of the illness;
- (c) The nature of the disease;
- (d) When the prisoner died;
- (e) In cases where a post-mortem examination is done, an account of the appearances of the deceased after death. i.e. swollen neck, bluish fingers; and
- (f) Any special remarks that may appear to the MO to be required.

However, the Commission did not observe any such entries by the prison doctor in the death record files of prisoners who reportedly died due to illnesses. When inquired about the details they record, the MOIC at the WCP PH mentioned that they record the name and prisoner number of the deceased and the date and time of the death. Due to the failure of MOs to record accurate details about the deceased's medical condition, especially the time the deceased fell ill and when the MO was first informed of the illness, it will not be possible to identify delays in communication and the provision of medical treatment. This can result in no responsive preventative action being taken by the administration to ensure deaths due to similar circumstances do not take place in the future.

9. Deaths in prison due to accidents

The Commission has observed that the conditions of wards and cells of prisoners are such that there is a high likelihood of an accident occurring due to a hazard, such as insecure wiring, crumbling infrastructure etc. A high risk of fire hazards was also observed at many prisons visited due to the structures being decades or even more than centuries old and not being maintained properly.⁴⁷⁶

Work places in prison also carry the risk of prisoners suffering serious injuries due to hazard and health risks. Safety measures in place at work places were observed to be at minimum, if not non-existent.

During the study, the Commission was informed of an incident where a prisoner's death resulted from an accident at a work party. The deceased, who was assigned to the Brick Party at the WWC, was reportedly loading bricks onto a lorry which had a broken door hinge. The

⁴⁷⁵ For a detailed discussion on the shortcomings of the prison healthcare system, please refer to the chapter on Access to Medical Treatment.

⁴⁷⁶ For a detailed discussion on the hazard risks inside wards and cells, please refer chapter Accommodation.

rear door of the lorry had been lifted upwards and fastened using a rope, to prevent it from falling until the brick loading was complete. The deceased had allegedly been loading bricks into the lorry through the rear door, when the rope broke off and the door fell on his head. Witnesses to the incident reported that he died instantly, due to the grievous head injury that had resulted.

The Commission learnt of the incident when conducting inspections at WWC, but it was observed that acquiring information on this incident was extremely difficult due to the inadequate/misleading record of the death. Upon requesting information from the prison administration on all the deaths that occurred in the prison that year, the Commission was provided with the preliminary inquiry details of two other incidents of death in the same year, but not of the specific work place accident. Further, it was not possible to obtain detailed information from prisoners who appeared reluctant to provide information due to fear of reprisals from prison officers.

The Commission subsequently received a complaint from the deceased's mother, which allowed the Commission to initiate an investigation and request all necessary documents to be submitted for investigative purposes. The letter from the prison, in response to a query regarding the death, stated that the inmate had died due to an accident that took place when he was loading bricks to a tipper and he was admitted to the GH after which he died. The JMO report mentions that the death occurred due to head injuries. However, the Magistrate's report mentioned that, even though there is no doubt that the head injuries lead to the death of the prisoner, the evidence raises reasonable suspicion that a crime had been committed by the driver of the lorry, and an investigation was ordered and reports called by the Magistrate. This highlights not only the importance of safety measures at work sections to protect the health and safety of inmates⁴⁷⁷, but also displays the lack of measures in place to hold the prison administration accountable, which makes it possible to mask crucial details of a prisoner's death.

10. General observations

The Commission observed that in the event of a custodial death, the prison conducts a preliminary inquiry, where circumstances surrounding the death are documented and recorded and then forwarded to the Prison Headquarters. However, the inquiry would not outline the cause of death, as revealed by the JMO, nor investigate the factors that led to the death. This prevents the administration from identifying causal factors that place inmates at risk, and hence no resultant steps are taken to mitigate the risk and avoid similar deaths from occurring in the future.

An independent investigation into the death is initiated and overseen by a judicial officer, while the police conduct investigative steps. Delays were reported in the procedure, whereby police officers or Magistrates may not arrive at the scene of death as soon as they are informed, until which time the prison officers remain in control of the deceased. In such

⁴⁷⁷ For a detailed discussion on workplace safety measures in prison, please refer chapter Prison Work.

situations there are no safeguards in place to prevent prison officers from compromising key evidence at the scene of death. In the majority of cases of deaths in prison, the Commission observed that the deceased prisoner would be taken to the PH or GH as officers are not qualified to declare an inmate dead. This has the effect of disrupting the scene of death and the circumstances in which the defendant is found. Furthermore, the inmate would always be declared as having died in the GH/PH, which may mask information on the actual circumstances and cause of death.

During the course of the study, the Commission observed a few patterns with regard to unnatural deaths in prison. Unnatural deaths are caused by external factors and in this study, the Commission identified four main types of unnatural deaths that occur in prisons: death due to violence, suicide, inadequate medical attention and death by accident. Staff members, both medical and uniformed, neglecting their duties emerged as a key contributory factor in all types of unnatural deaths in prison. While this may be as a result of staff shortages and difficult working conditions for prison officers, examples in this chapter demonstrate how structural and administrative shortcomings can eventually lead to the death of prisoners in custody.

Additionally, the lack of practices in place to prevent unnatural deaths, such as screening for suicidal tendencies, proper management of prisoners with psychiatric illnesses and persons with withdrawal symptoms, was observed to be common elements in most of the cases discussed above. These shortcomings coupled with structural problems, such as the severe lack of staff and resources, have resulted in preventable deaths occurring in prison. Furthermore, there are no measures in place to confirm whether a death occurred due to delayed access to medical attention; instead the symptoms for which the inmate required medical attention would be recorded as the cause of death.

However, the most striking pattern or feature observed with regard to deaths in prison was how lightly the death of a prisoner is viewed in prison. Death, a matter of utmost solemnity and seriousness in the outside world, was often discussed, narrated and treated with indifference, thereby creating the impression that life outside prison and life inside prison are not of the same value.

As mentioned above, the Commission did not observe any such preventive mechanisms being established, even after multiple deaths in prison resulted from identified recurring factors. These included, *inter alia*, the inadequate access to medical attention at night time, the absence of effective measures in place to deal with drug dependent persons suffering withdrawal symptoms, the use of unlawful physical force by officers, the lack of screening processes to identify persons at risk of suicide or self-harm, and the non-existence of suicide prevention mechanisms, including the lack of officer training.

16. Rehabilitation of Prisoners

"In my opinion, they just want to imprison people and then free them when time comes; they have no intention of reforming them. We have even requested for it but we haven't received anything. The government outside is trying so hard to stop the use of drugs in this country but in a prison, even the people who are in here for other crimes, are put with people who do drugs, thereby pushing the others also to use drugs. They are creating the environment for people to become drug addicts. They should provide education and training to the prisoners who would like to learn. They should put the prisoners who are under the influence of drugs in a separate section and rehabilitate them. They should provide counselling to those inmates who are depressed."

Remandee, NMRP

1. Introduction

If the ultimate purpose of incarceration is to protect society from further crime, then the rehabilitation of offenders is the most critical factor which determines the safety and social stability of a nation. This is particularly significant for offenders who commit crimes as a result of their circumstances; prison time can operate as a crucial intervention, a chance to take a path out of and away from an environment that is conducive for criminal behaviour.

Effective rehabilitation requires the will of the government, supported by resources and funding, to ensure offenders leave prison with no or minimal likelihood of recidivism and equipped to reintegrate into their community and live as productive citizens. An effective correctional system inherently requires a commitment to the principle that offenders have the capacity to reform and are worthy of a second chance.

The actions of the government are often driven or shaped by public opinion, which in many societies however, holds that offenders should not be allowed to forget the cost of their crime. Their behaviour is viewed as morally offensive, they are deemed undeserving of efforts to rehabilitate them, and are thought to be better off in prison as outcasts. The root causes of crime, the circumstances that create criminal behaviour and the conditions of detention escape public discourse and concern, and the prison population continues to grow exponentially. Prisoners would thus be released into the same environment and likely the same circumstances in which they committed the crime in the first place, except they now carry the stigma of imprisonment, the impact of reduced chances of earning a livelihood as they are not viewed as employable, the resultant loss of income, estranged family relationships and disapproval of the community. Without rehabilitation, therefore, a prisoner is not equipped to turn away from reoffending, and the ultimate objective of incarceration - to prevent crime - is lost. It must be highlighted at the onset that, as per the 2017 Revised Budget of the DOP and the Estimated Budget for 2018, only 0.05% of the total

DOP budget is dedicated to the rehabilitation of prisoners⁴⁷⁸. Rehabilitation Officers informed the Commission that they are required to send monthly reports on the rehabilitation activities conducted in the prison to the DOP Head Office who maintain oversight of the usage of fund and rehabilitation activities undertaken in prisons.

The Commission is of the opinion that the government, as well as the general public, must reflect upon the objectives of the criminal justice process and incarceration, and whether the status quo benefits the society or requires significant change. If rehabilitation of prisoners was considered a top priority and resources were devoted to that purpose, prisoners would be given the chance to evolve into productive and responsible citizens and released into society with the skills and capacity to improve their lives. For this reason, it is imperative that meaningful rehabilitation programmes and opportunities, including counselling and spiritual and personal development programmes, must be made available in prison. Any impediments to the provision of such programmes must be addressed and rectified.

While this chapter explores the options for the rehabilitation for those sentenced to prison, the use of alternatives to incarceration for certain offences which is widely advocated by proponents of restorative justice are discussed in Part 7 of this report. Non-custodial measures provide better opportunities for the rehabilitation of offenders as they remove the negative social cost of imprisonment, which includes *inter alia* the loss of family connections and income. Furthermore, by allowing offenders who have committed minor crimes to remain in the society and assist them to become productive citizens, the risk of recidivism can be minimised. For a detailed discussion of options other than incarceration, please refer the chapter Non-custodial Measures.

2. Rehabilitation programmes in prison

“Wrongdoers are imprisoned to turn them into good people. Nothing like that happens inside this prison. People who are imprisoned for committing one wrongful act, go out learning ten other wrongful acts.”

Convicted, KRP

SMR 4 states that the aim of a sentence of imprisonment is primarily to protect society against crime and to reduce recidivism. It further states that ‘those purposes can be achieved only if the period of imprisonment is used to ensure the reintegration of such persons into society upon release, so that they can lead a law-abiding and self-sufficient life’. It mandates the prison administration and other competent authorities to offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a ‘remedial, moral, spiritual, social and health and sports-based nature’. It requires all such programmes, activities and services to be delivered in line with the individual treatment needs of prisoners. The requirement to ensure rehabilitation is individualised is also reiterated in Rule 89 of the SMRs. In line with these aims, the DOP states that the vision of the department is ‘social integration of inmates as good citizens through

⁴⁷⁸ Head 232 - Department of Prisons Budget 2017-2018, point #8

rehabilitation,' thereby highlighting the importance of rehabilitation in the process of incarceration.

The data gathered during this study reveals that rehabilitation in prison constitutes opportunities to be engaged in prison work, i.e. work parties, educational programmes or vocational training, as well as access to rehabilitative services, such as counselling, religious and cultural activities, and sporting activities. A difference between convicted and remand prisoners, is that while most convicted prisoners are typically required to be engaged in a rehabilitative programme such as prison work, by virtue of their sentence, engaging in a rehabilitative service would usually be a matter of choice.

It must be established at the outset that work parties constitute the primary component of the rehabilitation and reform agenda of the DOP, with majority of the convicted male population employed by a work party of some sort. Prisoners and prison officers stated that most convicted prisoners are engaged in manual work of some sort because their sentence stated in the Warrant of Commitment requires they be subjected to rigorous imprisonment. However, this system refers to the out-dated mode of criminal justice administration and incarceration, whereby prisoners were engaged in manual labour as part of their punishment. This has been replaced by the DOP's system of industrial work parties. Due to the prominence of prison work as an entrenched characteristic of the correctional system, it will be discussed in detail in a separate chapter. This chapter will examine the different types of rehabilitation programmes available in Sri Lankan prisons, as well as the impediments to successful rehabilitation of prisoners in the Sri Lankan prison system. Finally, the impact of rehabilitation on released prisoners will be discussed under post release support.

It should be noted that the Task Force Report emphasised that relevant corrective measures should be made available to prisoners to assist in reducing the risk of re-offending and enable them to become law abiding and successfully integrated members of society.

2.1. Education and literacy programmes

The International Convention on Economic, Social and Cultural Rights affirms the equal and non-discriminatory right of all persons to education for the full development of the human personality and sense of its dignity.

SMR 104 states that provision shall be made for the further education of all prisoners capable of profiting from it, including religious instruction where possible, with a special focus on the education of illiterate prisoners and of young prisoners. It further states that so far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.

Resolution 1990/20 on Prison Education⁴⁷⁹ of the United Nations Economic and Social Council (hereinafter referred to as UN ECOSOC) states Member States should provide

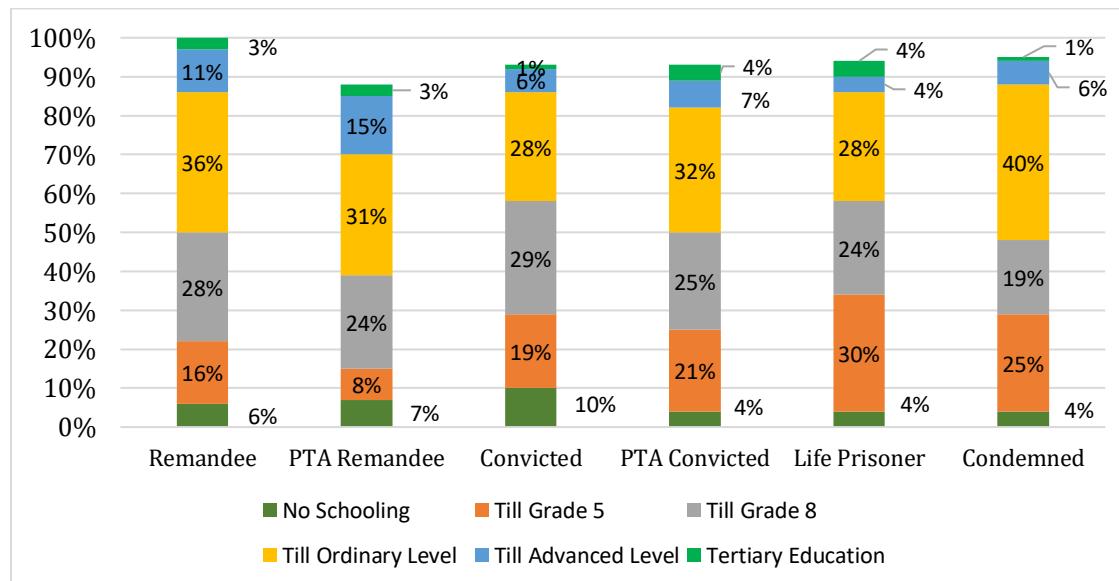
⁴⁷⁹ <https://files.eric.ed.gov/fulltext/ED342888.pdf>

various types of educational opportunities that would contribute significantly to crime prevention, re-socialization of prisoners and reduction of recidivism, as well as library facilities and other programmes that promote the human development of prisoners. It also highlights the importance of supplying adequate resources, i.e. qualified educators and equipment. It emphasises that education in prison should aim at developing the whole person, bearing in mind the prisoner's social, economic and cultural background. Every effort should be made to encourage prisoners to participate actively in all aspects of education and education should be an essential element in the prison regime.

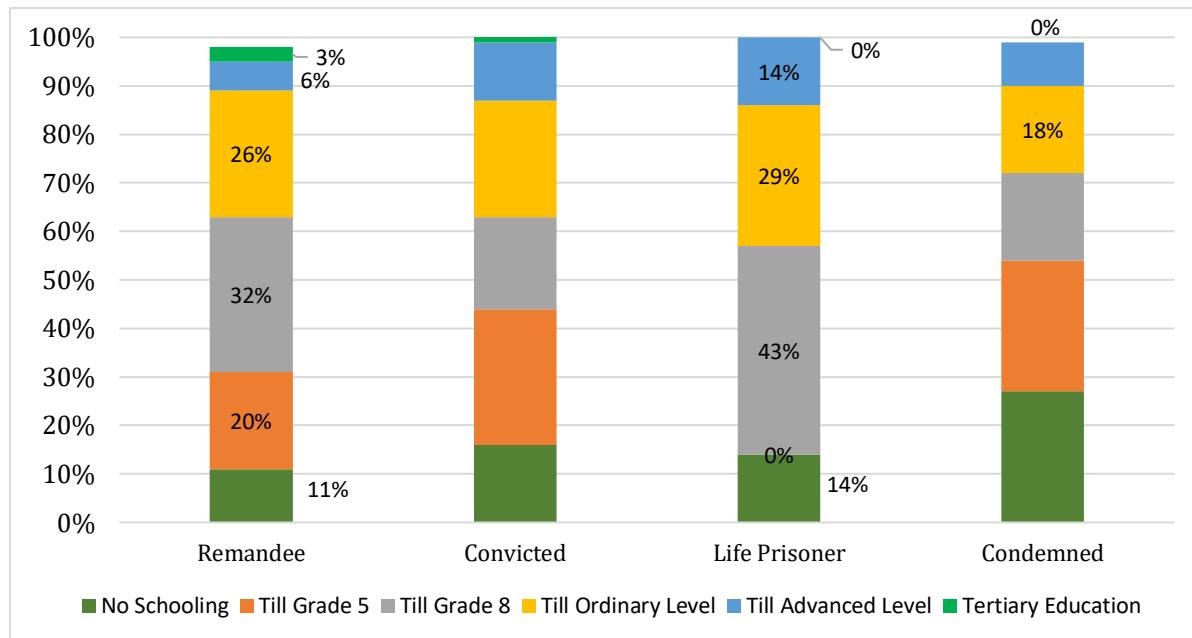
In national law, Section 94(1) (i) of the PO gives the Minister the power to make rules on religious instruction and education of prisoners and Section 553 of DSO states that SPs should endeavour to organise evening educational classes in each prison and preferably seek the cooperation of the Education Department under its Adult Education Scheme or of any voluntary organization. The following paragraphs examine the education of illiterate prisoners, formal education opportunities available in prison and religious education in prison.

When administering questionnaires during prison visits, one of the primary questions asked of prisoners was their education level. The results, as indicated below, illustrate that most inmates had completed Grade eight or O Levels, whereas less than 10% of inmates from all detention categories, except PTA remandees, had completed their A Levels. Similarly, the responses from female prisoners allude that majority of the inmates had completed Grade 8 or O Levels with less than 15% of female detainees having completed their A Level exams.

Graph 16.1 – Male respondents' level of education



Graph 16.2 – Female respondents' level of education

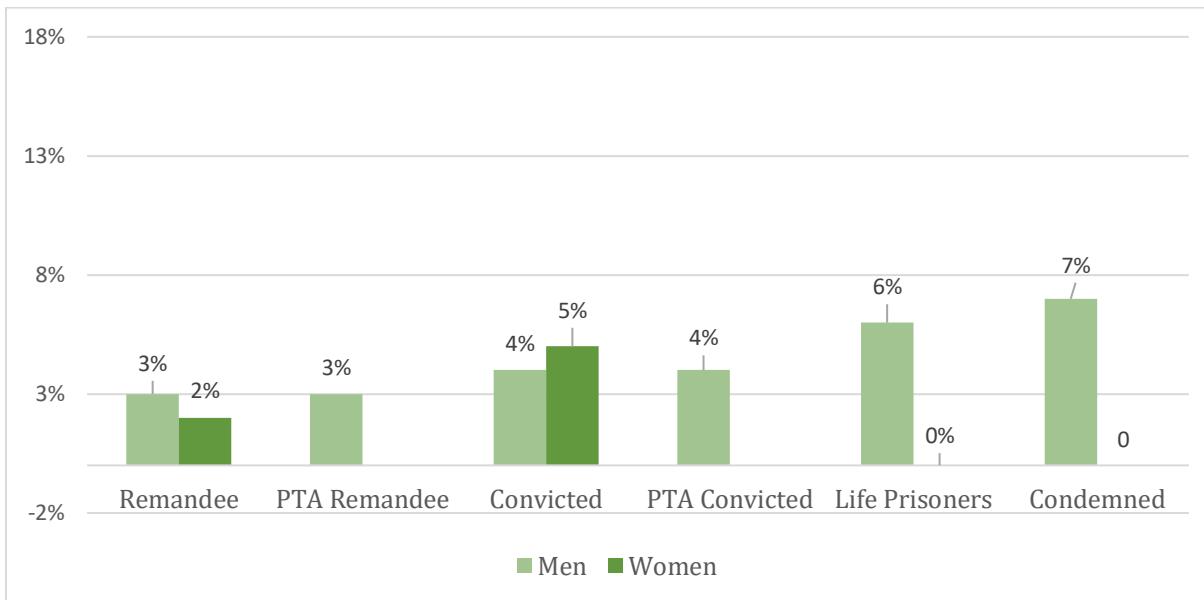


A number of inmates also required the assistance of the officers of the Commission to complete the questionnaires, as they were unable to read or write themselves. The narratives of prisoners in the interviews alluded to the fact that a combination of economic deprivation and challenging social conditions, due to which young men and women often had to give up their education in order to earn an income for the family, and the exposure to violence, crime and substance abuse at an early age, had led these individuals to become involved in criminal activity. By allowing inmates the chance to complete their education while they are held in prison, the state has a crucial opportunity to intervene and improve the life skills of inmates and allow them to access opportunities to better their lives. It must be realised that prisoners who commit crimes due to circumstances of poverty often cite they had no choice but to engage in illegal behaviour in order to maintain their livelihood. Low self-esteem and inability to hope and believe in one's own potential, competence and future directly results from the circumstances they were raised in and the lack of opportunities they had access to. The importance of providing educational services in prison to prevent further crime upon release cannot therefore be understated.

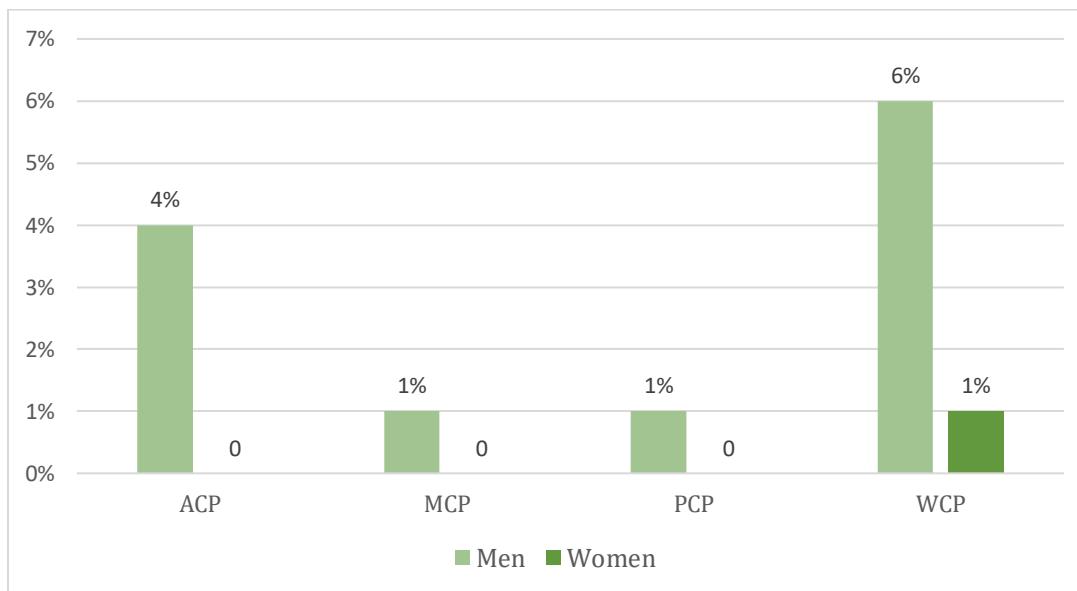
Of the total sample, 3% of male respondents and 3% of female respondents stated that they are involved in an educational programme in the prison at which they were housed. The following graphs disaggregate the data across prisoner categories.

The quantitative data illustrates that generally very few prisoners stated they were involved in any kind of educational programme in prison. It must be noted that education programmes may include literacy classes, English classes, computer classes, dhamma education etc.

Graph 16.3 – Male and female respondents who were part of an educational programme in the prison at which they were housed

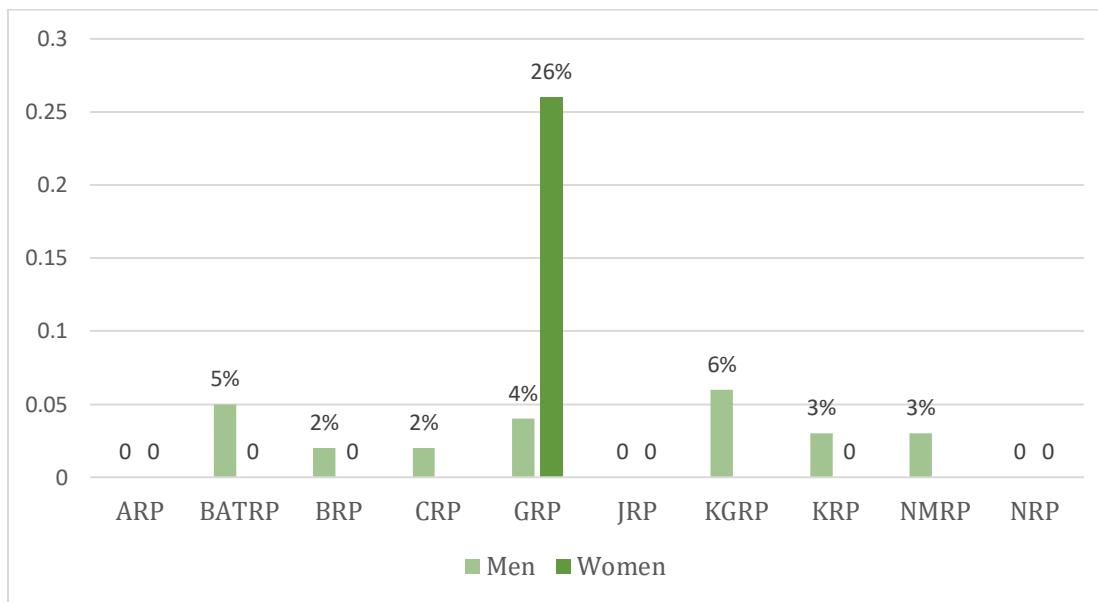


Graph 16.4– Male and female respondents across closed prisons who were part of an educational programme in the prison where they were housed ⁴⁸⁰



⁴⁸⁰ MCP holds no female inmates

Graph 16.5 – Male and female respondents across remand prisons who were part of an educational programme in the prison where they were housed⁴⁸¹



The relatively higher number of female respondents in GRP is indicative of the fact that GRP, at the time of the visit to this prison, was conducting an on-going letter writing/literacy programme in the female section. The majority of the convicted women and some remandee women were participating in this programme.

Literacy classes

“Most of them [other prisoners] have poor literacy. We can educate them. Most of them don’t know other languages. Those who know Tamil, don’t know Sinhala. Those who know Sinhala, don’t know Tamil. There is miscommunication due to this. Even if we tell them something, it can be interpreted as something bad. So can teach them languages.”

PTA Prisoner, NMRP

When examining the educational programmes conducted in prison, the Commission observed that many prisons held ‘literacy classes’ for prisoners, which would include informal classes on a range of subjects. For example, the Informal Education Units of the Hambantota and Sabaragamuwa Educational Divisions conduct evening literacy classes three and four days a week respectively in WWC and KGRP, after inmates have finished their party work. The Counselling Officer at WWC stated they ensure special attention is paid to the provision of literacy classes for prisoners, as they consider illiteracy to be one of the contributory causes of criminal behaviour. In CRP, literacy classes are conducted by the Rehabilitation Officers, and are similarly available in ACP and GRP too. In JRP, the

⁴⁸¹ CPR, KGRP and NMRP hold no female inmates.

Rehabilitation Officer mentioned that they are going to commence a literacy class soon with the help of a resource person sent by the Zonal Education Director.

In addition to these educational opportunities, the Commission observed opportunities to learn English in many prisons (ex. WCP Male and Female Sections, CRP), Tamil in a few prisons (ex. WCP Male Section), and IT education at BRP. An IT class, was conducted by the National Youth Council on Saturdays at BRP for fourteen convicted and unconvicted prisoners. However, two computers of the six available at the prison, during the Commission's visits, were not working.

The Commission was also informed of language classes that were initiated and conducted by prisoners themselves in the NRP female section, and in CRP and ARP, mainly by prisoners who worked as teachers before their imprisonment. The Commission noted that such initiatives were encouraged by the prison staff as they provided learning and engagement opportunities for prisoners when the prison did not have funds to source teachers from outside.

Formal education

Regarding formal education in prison, Circular No. 26/199 provides for convicted (resident) prisoners to sit for examinations conducted by the School Examinations Organization (Data) Branch of the Department of Examinations without paying the examination fee. It further states that applications for examinations conducted by the aforesaid Department shall be brought to the convicted prisoners who wish to apply, and the completed applications, after verification and rectification, shall be sent to the CGP by the SP two weeks prior to the closing date. It mentions that all SPs and ASPs shall take necessary steps to facilitate convicted prisoners to sit for the exams.

In addition, Circular No. 24/2013, titled 'Duties of the Welfare Officers' states that conducting adult education classes for convicted and unconvicted prisoners with the support of the Ministry of Education, providing facilities for formal education and enabling prisoners to sit for government examinations (according to their levels of education) is one of the duties of Welfare Officers. The Commission was informed that about twenty-five to thirty prisoners completed the O Level exam in 2018, and anyone who wishes to sit for the exam is allowed to do so. To sit for exams, prisoners have to request permission from the SP and with the SP's approval the Rehabilitation Officers will make the necessary arrangements.

According to officers of the DOP Rehabilitation Division, the O Level exam centre for prisoners who are in prisons in the districts of Colombo, Gampaha and Kalutara (HWC, WCP, CRP, Kalutara, MCP, Pallansena, NRP) is NMRP. The Rehabilitation Officers stated the reason NMRP has been selected as the exam centre is because many PTA prisoners who were held in NMRP completed their O Level exams while they were in remand. Prisoners are reportedly brought to NMRP on the day of the exam instead of being transferred to NMRP a few days prior to the exam, although the latter option would be logistically more convenient, because the change in environment at NMRP and being held in a new institution may adversely affect their performance at the exam, of which officers are mindful.

Higher education

The DOP Rehabilitation Officers informed the Commission that Rehabilitation Officers always encourage prisoners to pursue higher education during their time in prison as it is a valuable utilisation of their time and is an indicator of their attempts to rehabilitate during the sentence, during assessments for early release.

The Commission observed that a few male prisoners island wide have completed undergraduate degrees while in prison, with the assistance of the prison administration, which arranged examinations to be held in prison etc. The Commission was also informed about one prisoner who is currently completing a PhD during his sentence; if the prisoner succeeds, he will be the first person in Sri Lanka to acquire a PhD during incarceration. This prisoner receives considerable assistance from the prison and the SP to access lecture notes and recordings of classes because the administration wishes to see the prisoner succeed and set a record. The Commission did not come across a female prisoner who has completed a degree while in prison.

Religious education

Circular No. 24/2013 states that Welfare Officers should hold *Dhamma*⁴⁸² schools of all religions for the inmates and the Commission observed that in many prisons religious education opportunities are in place, most commonly classes only for Buddhist religious instruction, which are usually held on Sundays. The largest *Dhamma* school was observed in WCP. According to 'Sanniwedana', a quarterly magazine published by WCP (Issue No. 178-April 2018), Sri Sucharithodaya *Dhamma* School in WCP, which began about three years ago, currently has about 200 students and a few teachers who visit the prison along with a few inmates who also teach. Nineteen of twenty prisoners who sat for the exam passed the *Dhamma* School Final Certificate Examination (2016/17) held by the Department of Examinations, for which an examination centre was organised inside WCP.

The Commission was informed that the *Daham Pasala (Dhamma school)* examination is completed by many long-term prisoners as well as condemned prisoners during their sentence, and textbooks are provided by the Ministry of *Buddha Sasana*. In this regard, it should be noted that according to Circular No. 05/2012, when making recommendations on granting Home Leave for prisoners, a factor that is given much attention is whether they have acquired religious education. However, since the primary focus of religious education is on Buddhism, the inadequacy of religious instruction in other religions and secular faiths or philosophies is disadvantageous to followers of those religious faiths when they apply for Home Leave.

Access to books

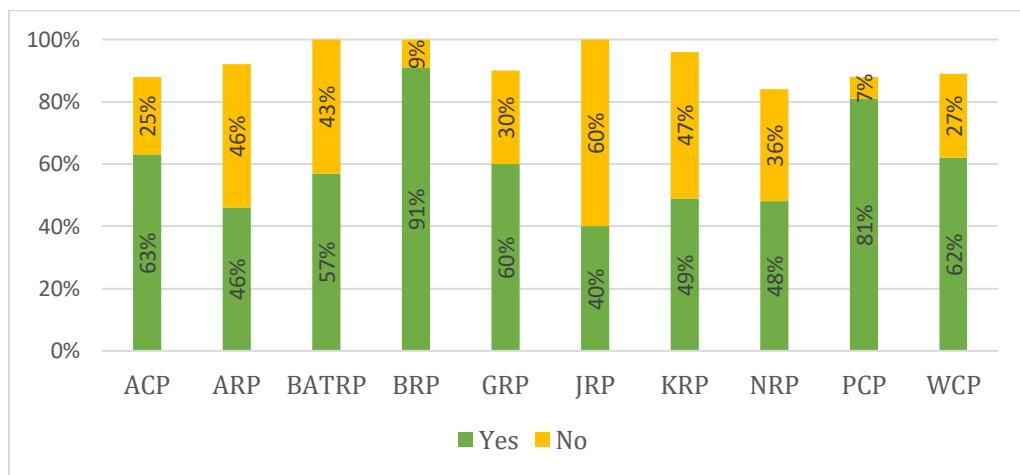
Reading has been universally identified as an important and beneficial recreational activity, which is also educational. SMR 64 states that every prison shall have a library for the use of

⁴⁸² Buddhist religious teaching

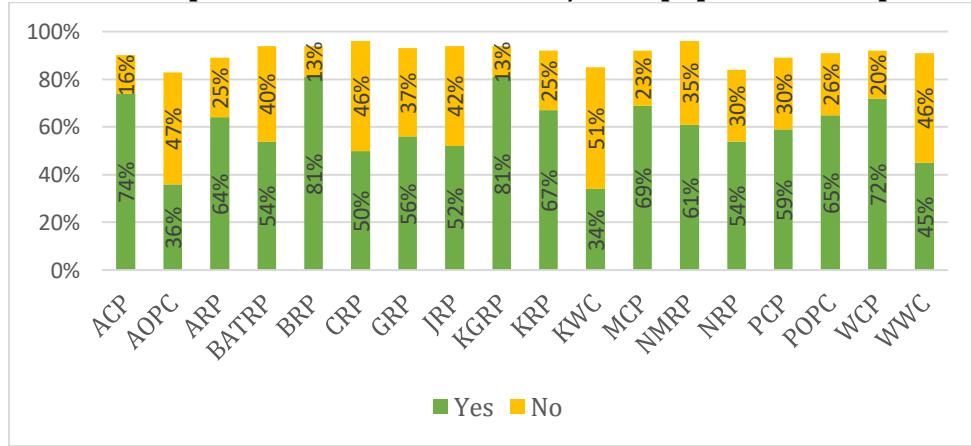
all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it. SMR 117⁴⁸³ provides for unconvicted prisoners to procure books at his or her own expense or at the expense of a third party.

Section 204(4) of the SRs gives the right to unconvicted prisoners and civil prisoners to keep any book, document, or other article which was in their possession at the time of admission to the prison in their cell or ward and to procure at their expense books, both subject to the approval of the SP. Circular No. 24/2013 states that it is a duty of the Welfare Officers to provide library facilities to the prisoners to increase their social knowledge and understanding.

Graph 16.6 – Female respondents' access to books/newspapers across prisons⁴⁸⁴



Graph 16.7 – Male respondents' access to books/newspapers, across prisons



⁴⁸³ SMR 2015, r 117, 'An untried prisoner shall be allowed to procure at his or her own expense or at the expense of a third party such books, newspapers, writing material and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution'.

⁴⁸⁴ For a detailed discussion on access of prisoners to newspapers, please refer chapter Contact with the Outside World.

Of the total, 61% of male respondents and 62% of female respondents stated that they have access to books/newspapers. It must be highlighted that male and female respondents from BRP report the highest level of access to books/newspapers.

It must be noted that ‘access to books’ was understood by the respondents both as “have books/newspapers in the prison,” and “I can read books/newspapers regularly”. It must also be highlighted that affirmation of access to books does not indicate that prisoners are inclined to read them or that adequate books are available for all prisoners, nor does it reflect the quality of the books to which they have access.

2.2. Vocational training

SMR 98(2) states that vocational training in useful trades shall be provided for prisoners who can profit from them, especially for young prisoners. SMR 78(2) provides for a sufficient number of trade instructors to be employed permanently, in addition to part-time or voluntary workers. Resolution 1990/20 of the UN ECOSOC on Prison Education identifies vocational training as an important aspect of prisoner education and states that vocational education should aim at the greater development of the individual and be sensitive to trends in the labour market.

It should be noted that the Taskforce Report stated that special emphasis should be placed on vocational training and skills development of prisoners, if overcrowding in prisons is to be reduced in the long run. Circular No. 24/2013 states that it is a duty of the Welfare Officers to arrange vocational training programmes for prisoners.

As highlighted above, prisoners often cite their lack of skills and education as a reason that contributed to criminal behaviour because they were rendered unemployable by the circumstances in which they were raised and the lack of opportunities. In order to ensure that released prisoners do not have to resort to criminal practices to eke out a livelihood, it is imperative to ensure that prisoners have the chance to learn employable skills in line with the current labour market demands. Hence, time in prison can function as the crucial intervention for prisoners who have experienced a cycle of crime and violence from a young age.

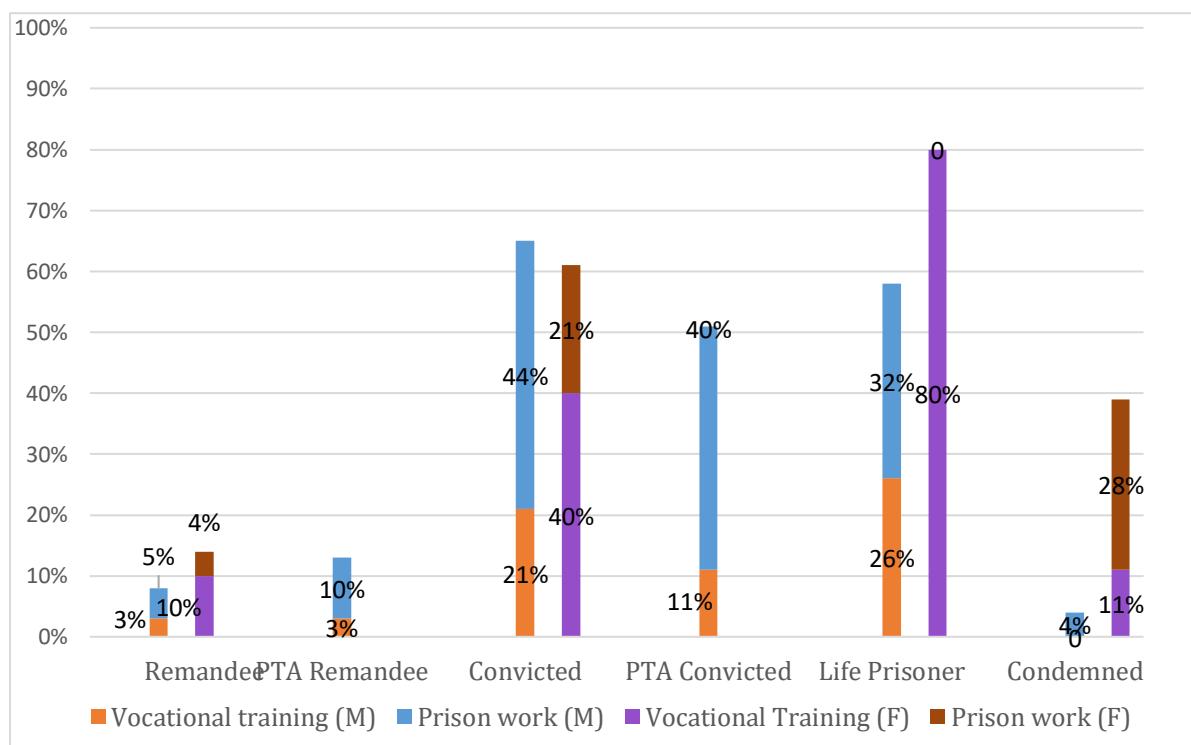
The following series of graphs sets out the respondents’ answers about the vocational training programs in which they were engaged during their incarceration. It should be noted that the statistics presented in the graphs below could also depict party work, in addition to vocational training, as the respondents did not make a distinction between party/prison work and vocational/skills training, when answering questions about programmes in which they participate. For example, one prisoner may perceive carpentry as vocational training while another prisoner engaged in the same program may perceive it to be party/prison work.⁴⁸⁵ The distinction between party work and Vocational Training is therefore blurred,

⁴⁸⁵ For a detailed discussion on prison labour, please refer chapter Prison Work.

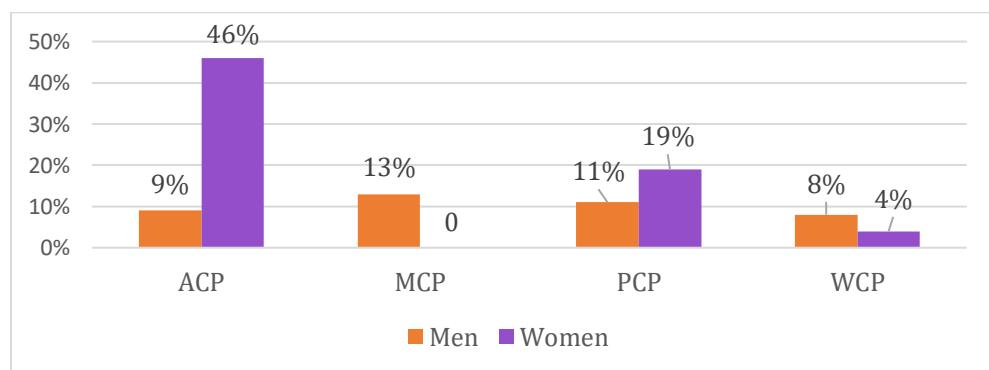
and even the prison administration often refers to certain work parties as constituting a form of vocational training.

Of the total sample, 11% of men and 14% of women stated they were involved in vocational or skills training. In addition, another 22% of men stated they were involved in prison work while 7% of women stated the same. It must be noted that some respondents made a differentiation between prison work and vocational/skills training, while party work is also designed with a goal to provide vocational/skills training.

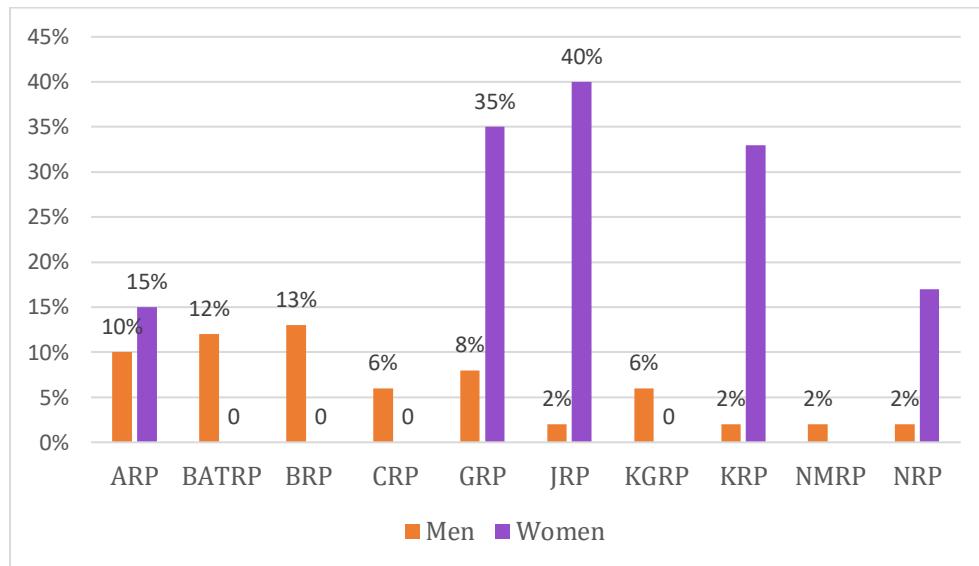
Graph 16.8 - Male and female respondents across prisoner categories who engage in prison work



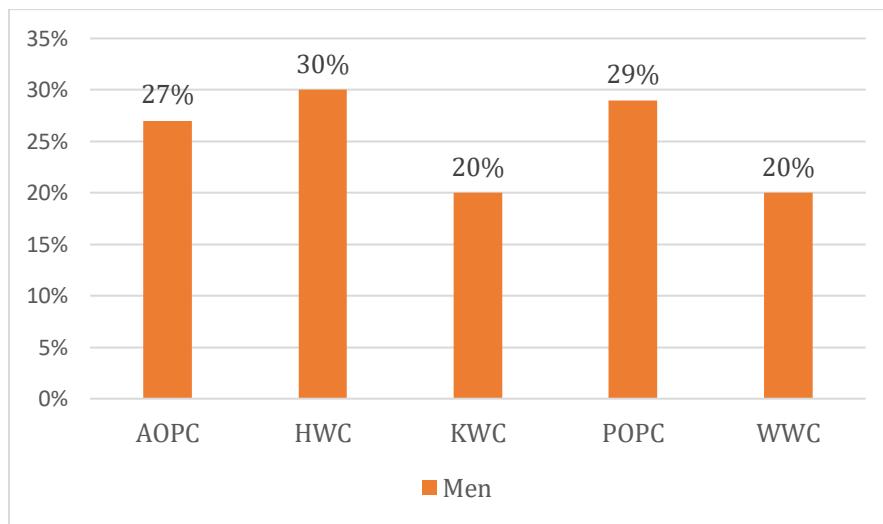
Graph 16.9 – Male and female respondents across closed prisons who engage in vocational/skills training programmes



Graph 16.10 – Male and female respondents across remand prisons who engage in vocational/skills training programmes



Graph 16.11 – Male respondents across open prison and work camps who engage in vocational/skills training programmes



Types of vocational training programmes

According to a document the Commission received from the Commissioner of Prisons – Administration/Intelligence and Security, vocational training for prisoners is conducted by the following entities:

- Vocational Training Authority (hereinafter referred to as VTA)
- NAITA

- Informal Education Unit
- NARA Institute
- Vidatha Institute
- National Youth Council

According to the said document, vocational training courses of six to twelve months are available in:

- WCP
- PCP
- ACP
- MCP
- POPC
- WWC
- HWC
- Boossa Remand Prison
- AOPC
- Correctional Centres for Youthful Offenders in Thaldena and Pallansena

It was revealed during inspection and interviews that prisoners are often awarded a certificate upon successful completion of a vocational training course by the conducting authority, and more importantly, that the certificate does not mention that the qualification was obtained while in prison.

An inmate from POPC mentioned that he followed a six months course on making bags from cleaned and woven banana fibres, conducted by NAITA and was told he will be issued a certificate when he is released. He mentioned that certificates for the other vocational training programmes he took part in are also in the possession of the prison administration, as inmates do not have a proper place to store them in the ward. Therefore, special attention should be paid by the prison administrations to ensure such certificates are handed over to prisoners upon release.

Table 16.1 - The types of vocational training opportunities observed by the Commission in a few prisons visited

Institution	Vocational Training Opportunities
ACP	Female – sewing
ARP	Masonry, carpentry
BATRP	Masonry, plumbing, coir products, broom handle making
BRP	Masonry, LED bulb repairing, coconut shell carving Female section - sewing – machines broken and no instructor then
CRP	Hair cutting (for YOs only)
GRP	High speed Juki machine operation, wiring, aluminium work, picture framing

HWC	Sewing/tailoring (the training was said to be aimed at machine operation at garment factories), plumbing, ornamental carpentry and wood carving
JRP	Female - handcraft programme with Palmyrah leaves
KGRP	Hair cutting
KRP	House wiring
NMRP	Hair cutting
PCP	Welding, house wiring (electrical), ornamental carpentry
POPC	Coir products, wiring,
WWC	Welding, tailoring, carpentry, house wiring, masonry

Details of vocational training courses completed successfully in all prisons in 2017 are included in Performance Report – 2017 of the DOP which is a public document available on the DOP website.

While all other prisons the Commission visited offered at least minimal vocational training opportunities, JRP was highlighted as one of the prisons which provided the least number of vocational training opportunities for prisoners, with only a programme for making handicraft using palmyrah leaves conducted for female prisoners. One convicted inmate from JRP mentioned, “I have been here for four and half years and I have no idea what kind of work I will do when I go out because they have not taken any action or implemented any programmes that would help us when we’re released”. In other prisons, prisoners appreciated the existing vocational training opportunities as illustrated by the following exchange that took place in PCP:

Q: “Do you find this course useful?

A: Yes, in a way it’s good. I was promised a job by Ministers and MPs but I was not given one; I was helping the politicians when I was outside, I did all their work, because of that I became a criminal”.

Where unconvicted prisoners are concerned, the DOP is not obliged to provide vocational training opportunities for remand prisoners as they have not yet been convicted of a crime and therefore, do not need to be rehabilitated. However, all remand prisons make attempts to provide remand prisoners with access to rehabilitation programmes, to allow them to make use of the extended period of time spent in prison. This would also minimise the social cost of lost productivity of persons held in remand. The impact of the lack of useful opportunities for prisoners in remand is captured in the quote from a PTA detainee in NMRP below:

“I was arrested when I was thirty-three years old and if they release me after fifteen years my age will be... forty-eight years. Once I go home at forty-eight, what can I do at home? Do nothing. If we are like a software engineer, a hardware engineer or an A/C mechanic, if we have skills like that, we can go forward in life. It’s nothing like that now. By watching news daily, doing

exercises, eating and sleeping what do we gain? In life, twenty-four hours is important. If they ask what did you do in the twenty-four hours, what can we tell? Do I have to say I just ate and slept all 365 days?"

3. Rehabilitative services and personal development

3.1. Counselling

SMR 91-92 highlights counselling as one of the means through which prisoners can be enabled to encourage their self-respect and develop their sense of responsibility, which can contribute to leading law-abiding and self-supporting lives upon release.

Circular No. 24/2013 states that it is a duty of Welfare Officers to provide counselling facilities to prisoners, although it does not necessarily stipulate that they should conduct counselling themselves. Circular No. 05/2014 highlights that the purpose of rehabilitation is to ensure the reintegration of prisoners into society as productive citizens, through the use of social and counselling programmes to promote beneficial mental development. It states that the rate of reoffending, which also contributes to overcrowding, is an indication of weak rehabilitation programmes conducted in prison. Thus, the circular requires the assistance of professional counsellors from the Ministry of Social Services and Social Welfare, Divisional Secretariat offices and recognized and approved voluntary social service organizations to be obtained in conducting successful counselling programmes for inmates.

For prisoners who have suffered through trauma and violence before their imprisonment, or are grappling with the mental and emotional impact of being imprisoned while their families are left without a breadwinner, or simply struggling to adjust to the lack of self-determination, deprivation of liberty and separation from their loved ones in prison, the provision of the best rehabilitation opportunities and programmes will not be of any benefit if the psychological challenges they face are not dealt with. As indicated, rehabilitation in prison requires a holistic approach whereby the prisoner is allowed to engage in educational and skills training while being able to work on their emotional well-being and self-esteem. The provision of counselling services in prison is therefore imperative to ensure that prisoners are able to cope with the trauma and psychological impact of being incarcerated, so that they may be able to spend their time in prison in a productive manner.

Counselling services across prisons appeared to be ad-hoc and dependent on the will of the administration to introduce these programmes and the efforts made by Rehabilitation and Counselling Officers, rather than as a structured and routine programme. Counselling in most prisons referred to Counselling and Rehabilitation Officers employed in that prison offering counsel and advice in an informal manner to prisoners suffering with various problems on a need basis. Although the Commission did not explicitly ask prisoners whether they requested counselling from the Rehabilitation Officers, prisoners did not allude to approaching Rehabilitation Officers for counsel when discussing their treatment in prison during interviews. As discussed in detail below, the assistance of officers from the NDDCB was sought and group discussions on the impact of drug abuse were undertaken as part of

the informal drug rehabilitation programmes available in certain prisoners, but this was only available for prisoners considered to be drug dependent, rather than as an option for all prisoners.⁴⁸⁶

In ACP, it was mentioned that the District Secretariat Counselling Officers conducted a counselling programme once every two months. The challenges faced in obtaining the services of Counselling Officers from the District Secretariat were explained by a Counselling Officer at WWC who stated:

“We don’t have a Counsellor in the Tissamaharama AGA Office. Therefore, we must call an officer from Hambantota. We also tried to contact XXXX (a local counselling organisation). They declined saying that these prisoners are criminals and they don’t want to come here. I think most of the Counsellors are women and they were scared to come here”.

Other than counselling, leadership programmes and meditation programmes as well as yoga classes that seek to strengthen the character and the psychological state of the prisoners were observed being conducted in some prisons, but were held on an ad-hoc basis rather than as a well-integrated systemic measure.

3.2. Religious activities

SMR 65 states that a qualified representative of the religions followed by prisoners shall be appointed, on a full-time basis if practicable, and such representatives can hold regular services and pay pastoral visits in private to prisoners of his or her religion at proper times. Moreover, access to a qualified representative of any religion shall not be refused to any prisoner. SMR 66 states every prisoner shall be allowed to satisfy the needs of his or her religious life by attending services provided in the prison and through religious books. SMR 65 provides for the prisoners freedom to follow their religion, ‘which also encompasses the freedom to not engage in any religious activities’.

The freedom to engage in any religion of their choice, which would include the freedom not to follow a religion, is also protected by Article 10 of the Constitution of Sri Lanka. Section 239 of the SRs states that religious instructors shall be entitled to visit convicted and unconvicted prisoners to give religious and moral instruction to those who are willing to receive the same on Sundays and on other days on which prisoners are usually allowed freedom from work.⁴⁸⁷ Section 241 states that a suitable room shall be set apart where religious instruction can be afforded to prisoners and the rites of religion administered.

⁴⁸⁶ For more information on the lack of counseling services offered in prisons, please refer chapter Access to Medical Treatment.

⁴⁸⁷ SRs 1956, s 240, ‘Such ministers or religious instructors shall be allowed access at all times to any prisoner who shall be certified by the medical Officer of the prison to be seriously ill and to any prisoner sentenced to death, between the hours of 8 a.m. and 4 p.m. and immediately after unlock on the day of execution’.

The appointment of religious representatives is closely monitored by the DOP, by issuing annual Circulars (ex. Circular No. 17/2017), subjecting these appointments to the approval of the SP and heads of religions⁴⁸⁸ within the jurisdiction of the prison. Where PTA prisoners are concerned, the religious representatives appointed to such prisons are required to be cleared by the police⁴⁸⁹ after which the list of representatives is sent to the CGP. Moreover, it states that prior to approving their appointment, special attention should be paid to whether the priests conducted religious activities properly in the previous year, whether they have attempted to convert prisoners to other religions and whether they have criticized the administration of the prison.

In addition to these provisions, the DSO provides for special diet⁴⁹⁰ and outside hours⁴⁹¹ when engaging in religious activities and arrangements for Christmas,⁴⁹² Lenten Fast,⁴⁹³ Good Friday⁴⁹⁴, Vesak,⁴⁹⁵ Hajj⁴⁹⁶ and Ramazan⁴⁹⁷.

The Commission observed dedicated spaces for religious observation existed for all major religions in many prisons, i.e., a Buddhist temple, a Catholic/Christian church, a mosque and a Hindu temple. In some prisons, only Buddhist and Christian/Catholic or Islamic places existed, and Hindu kovils were observed to be the least commonly found place of worship in most prisons. Almost everywhere, the mosque would be inside a ward and the ward itself would be known as the Mosque Ward, and during the month of Ramadan, Muslim inmates from different wards would occupy the Mosque Ward as they follow a similar meal and prayer schedule during the month. While most prisons had separate religious places, ACP had four small cement platforms or blocks in every section of the prison (A, B, C etc), in the open areas of the section, with no shade. Inmates mentioned that it is not suitable for religious observation and the Commission observed that only identical statues of Lord Buddha were placed on the said platforms, while the platforms for the other religions were empty.

According to a document the Commission obtained from the DOP, the following religious activities take place in prisons:

⁴⁸⁸ Department of Prisons, Circular No 17/2017, When appointing religious representatives, the Superintendent should personally obtain individual written approval from the head Buddhist monk, the Bishop (Chief Father), Head Mawlawi Priest, and Head Kurukkalin within the prison jurisdiction, regarding the priests selected for Buddhism, Hinduism, Christianity, Catholicism, and Islam.

⁴⁸⁹ Department of Prisons, Circular No 17/2017 states that, in selecting priests for prisons that hold 'LTTE residents', it is more suitable to obtain a police report from the police station of the police jurisdiction the selected priests belong and include names according to that.

⁴⁹⁰ DSO 1956, ss 607, 608

⁴⁹¹ ibid, s 610, 'A prisoner taking 'Atasil' or observing partial fasting under this Standing Order will not be allowed out of his cell or ward as the case may be except for the purpose of attending religious service during the appointed hours, taking meals or exercise or answering calls of nature'.

⁴⁹² ibid s 612

⁴⁹³ ibid s 613

⁴⁹⁴ ibid s 614

⁴⁹⁵ ibid s 616

⁴⁹⁶ ibid s 618

⁴⁹⁷ ibid s 619

- Buddhist – observing *sil*⁴⁹⁸, meditation, *Bodhi pooja*, *dhamma* discussions, Vesak and Poson celebrations, *bhakthi geetha* programmes and religious education
- Hindu -Thai Pongal, Maha Shivaratri, Deepavali and pooja on the weekends
- Christian/Catholic – Sunday mass, Christmas and religious education
- Islamic – Friday (Jumu’ah) prayer, Ramadan, Hajj festival, Prophet Muhammad’s birthday and religious education.

3.3. Cultural activities

Resolution 1990/20 of the UNECOSOC on Prison Education identifies creative, religious and cultural activities, as an important aspect of prisoner education and states that creative and cultural activities should be given a significant role, since they have a special potential for enabling prisoners to develop and express themselves.

Circular No. 24/2013 states that the Welfare Officers have the duty to conduct programmes to increase the aesthetic talents of prisoners. To that effect, some prisons had an open stage (ex. MCP, WCP) where prisoners do performances on various occasions or where troupes from outside would visit prison to perform. For example, in MCP, the open stage is used for New Year and [church] festival dramas. In addition to these festivities, in some prisons there would be a ward dedicated to practising drumming, dancing or playing musical instruments, thus affirming the provision of musical instruments. For example, in BRP, K2 ward held practice sessions on drumming and dancing. In WCP, the Commission noticed a drama crew practising for a performance. Prisoners from GRP and BATRP also informed the Commission that drama and talent competitions were conducted in the prison and dance competitions were held in other prisons like WCP and MCP as well. The Commission also, on a visit to WCP, was informed about a singing competition being conducted, whereby male and female prisoners from within WCP and other prisons demonstrated their vocal talents before a panel of judges, which also included a veteran Sri Lankan singer. The finals for the competition were held at the BMICH hall and was attended by the Minister of Justice and Prison Reforms.⁴⁹⁹

The Commission was also informed that certain Rehabilitation Officers organize debates between groups of prisoners, particularly on Sundays when they may not have to attend to their work duties, to encourage research, competition and public speaking among prisoners and enable them to spend their time productively. Female inmates of BATRP spoke of such programmes with appreciation. This would be useful for inmates because it explores innovative methods of expanding their critical thinking and learning and most importantly allow them to develop their personality and confidence.

Circular No. 24/2013 also states that Welfare Officers should start youth clubs and scout programmes for prisoners. In addition, Circular No. 11/2014, declared 8 February as the

⁴⁹⁸ Some Buddhists observe Eight Precepts on full moon (Poya) days.

⁴⁹⁹ ‘Concert seeks to integrate prison inmates with society’ – Daily News, 2 September 2019 < <http://www.dailynews.lk/2019/09/02/local/195686/concert-seeks-integrate-prison-inmates-society>>

Prison Residential Scout Day and scouting camps were said to be conducted on this day. Circular 11/2011 permits the SPs to obtain the service of scouting groups for various institutional needs and for special functions, and for external work of the institution. A document provided by the DOP mentioned that prisons have literary, youth and elderly clubs.

The Commission observed that prisons island wide held several cultural activities and celebrations. The most common event was the annual Sinhala and Hindu New Year, celebrated in April. There would usually be a festival, with games and other activities, in which prisoners, and sometimes both prisoners and officers would participate. Small gifts were said to be distributed to the winners of the tournaments, often a few essential items, such as soap. Prisoners have suggested that all religious occasions be treated equally and prisoners should be given the required provisions to celebrate their respective festivals.

The other major celebration within the prisons system is the annual Prisoners' Day in September. Usually, a series of festivities would be held throughout a week commemorating the event, including stage drama and other performances and family meet-ups. Often, there would be cultural celebrations on other special or significant days.

3.4. Outside hours and sporting activities

SMR 23 states that every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily, and young prisoners and others of suitable age and physique, shall receive physical and recreational training during the period of exercise, and space, installations and equipment should be provided to this end. SMR 35(1)(e) states that the physician or competent public health body shall regularly inspect and advise the director on the observance of the rules concerning physical education and sports, in cases where there are no technical personnel in charge of these activities.

Resolution 1990/20 of the UNECOSOC on Prison Education identifies physical education and sports as an important aspect of prisoner education.

Circular No. 24/2013 states that it is a duty of the Welfare Officers to facilitate the development of physical wellbeing of the convicted and unconvicted prisoners by engaging them in sports and organising events to develop their sportsmanship.

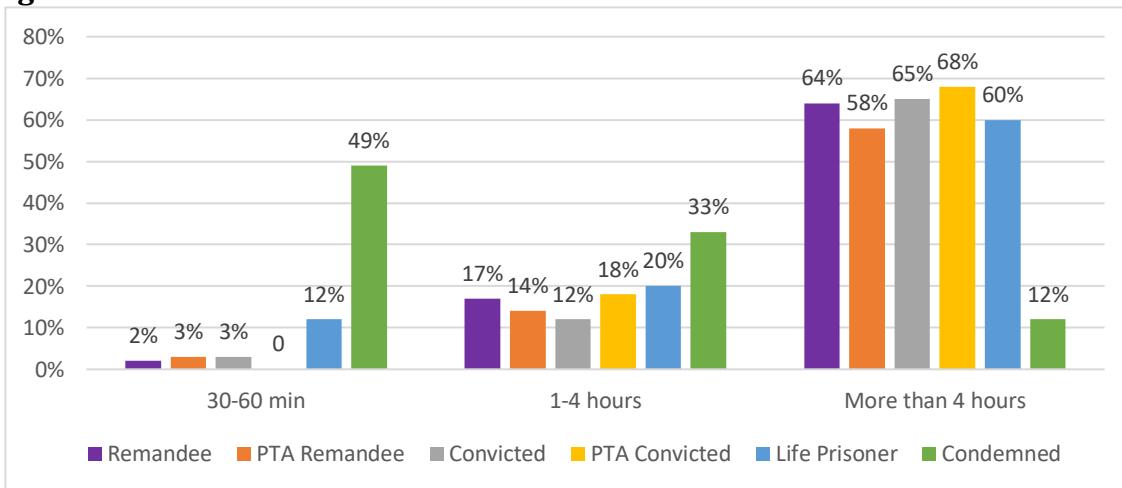
In order to determine whether prisoners have adequate opportunity to engage in physical and sporting activities, the number of outside hours and free time allowed to prisoners to engage in such activity must first be examined. At the onset, it must be reiterated that most convicted prisoners are engaged in various types of party work for a substantive portion of their day and therefore have minimal time to engage in leisure activities. Furthermore, prisoners are required to be returned to their cells and wards by 1700h after which the cells and wards are locked for the day.

Outside hours

Section 211 of the SRs states that during a period of not less than four hours of daylight on each day, every unconvicted prisoner or civil prisoner may, for exercise, remain out of his cell or ward in such place as may be allotted to him by the SP.

The Commission observed that the length of outside time allowed depends on the category of the prisoner. For example, remandees were outside the ward for approximately seven hours or more in almost every prison the Commission visited. Across prisons, the large majority of male prisoners in all the prisons (remand, close, work camps, open prison camps) stated they spend more than four hours per day outside their wards, the exception being JRP. Only 13% of the inmates in JRP stated that they spend more than four hours per day outside. This was also observed by the Commission as an anomaly compared to other remand prisons. The reason for this, as discussed in detail below under the shortcomings to rehabilitation, is the severe shortage of staff that JRP was dealing with.

Graph 16.12 – Male respondents time spent outside the wards across prisoner categories^{500,501}



Across prisoner categories, 68% of the PTA convicted, 65% of convicted male prisoners, 64% of remandees, 60% of male life prisoners and 58% of the PTA remandees stated they spend more than four hours per day outside of their wards.

The qualitative data corroborates the quantitative data regarding the outside hours allocated for condemned prisoners. For instance:

- In WCP, condemned prisoners are allowed to be outside the ward for thirty minutes, but inside the ward they are not locked in their respective cells within the day.

⁵⁰⁰ Data for answers for >4-8 h and >8 h were combined for meaningful analysis.

⁵⁰¹ Corroborated by the fact that in the majority of the prisons condemned prisoners are considered to be 'special' and 'high risk' and thus are locked up, as discussed above in the section.

However, the thirty minutes is not allowed on Poya days, Sundays and rainy days (WCP B3).

- In MCP, condemned appeal inmates in E3 Ward could be outside for forty-five minutes in addition to the meal times, whereas the condemned and condemned appeal in H Ward had forty-five minutes exercise time and forty-five minutes bathing time.
- In PCP, the condemned and condemned appeal inmates in D1 could be outside forty minutes to one hour per day.

A condemned inmate at MCP stated:

“Although we only get half an hour, during that time we are supposed to collect drinking water too. There is a tap. There will be about thirty people, then we have to wait in queue. It takes minimum of ten minutes to fill up your water bottles. Then there is hardly time to do exercises, [...] it is of no use”.

Prisoners who fall within the ‘Special’ category are often not allowed to be outside freely, even though some of them are unconvicted. In WCP, prisoners with life threats, prisoners with an escape history and prisoners punished for disciplinary offences are categorized as ‘Special’ and are separated from other prisoners. Special prisoners are usually allowed outside the ward only for half an hour per day. In addition to this half an hour they would sometimes be allowed outside during meal times in some prisons. It was observed that in some remand prisons where there is a separate section for special prisoners, they are able to remain outside the wards within that section (ex. CRP - G Cell, M1, M2, ARP – Max ward).

A jailor from KRP explained the reasons why special prisoners are allowed only limited outside time:

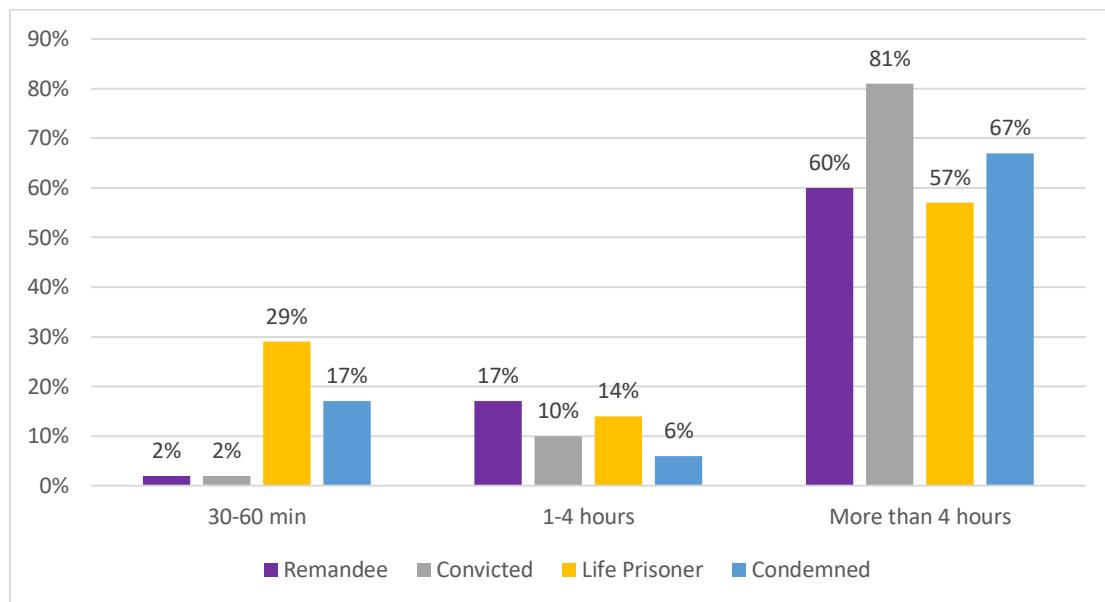
“Miss, you and I both will be holding our intestines in our hands, if we were to take some of these special category prisoners out.⁵⁰² There are rivals wanting to kill each other. We try our best to separate them but sometimes we don’t know who is who, and who are friends and who are enemies. Sometimes it could be that a rival has purposefully sent a remandee to prison with a contract to take out another rival in the prison – then how would we know? We depend on the information they provide us. Or officers from their years of experience know some underworld figures and then can tell – don’t put these together. They send a lot of underworld figures to Kuruwita because it’s away from the city”.

The most limited number of outside hours noted during inspections was at Welikada PH Cells which house severely mentally ill and special prisoners. One inmate claimed that the inmates in cells are not taken out daily and they usually have to plead to go outside. Even

⁵⁰² The jailor is referring to a specific incident, where a group of prisoners had mortally stabbed another prisoner with shanks resulting in the injured prisoners’ intestines falling out of his stomach wound in the Welikada Chapel cells section.

when they are taken out it is usually for only ten minutes. The said inmate claimed that they were taken out on the day of the Commission's inspection, which was the first time after ten days. He claimed that they are usually taken out only two to three times a month.⁵⁰³

Graph 16.13 – Female respondents time spent outside the wards, across prisoner categories⁵⁰⁴



Across prisons, the majority of the female respondents in each prison stated that they spend more than four hours outside the ward; the largest percentages being 95% in NRP and 92% in ARP. In contrast to their male counterparts in JRP, 60% of the female respondents from JRP stated that they spend more than four hours per day outside their wards. This is explained by the fact the female section is very small, akin to a house rather than a prison, with its main gate locked, and hence female inmates are not locked inside their respective rooms/wards.

Sporting activities and physical education

Remand prisoners were often observed engaged in volleyball or cricket during the day, since remandees are allowed to remain outdoors for most of the day. Convicted prisoners are allowed to have free time in the evening, but were not usually found engaging in sporting activities, as they often used this time to complete personal chores and tasks. 'Special'

⁵⁰³ For a detailed discussion of the cells at the PH, please refer chapters Access to Medical Treatment and Discipline and Punishment.

⁵⁰⁴ Note that the higher percentage of condemned female prisoners being able to spend more than four hours outside is explained by the fact that a relatively larger share of the condemned female respondents was from PCP, where condemned women are not locked in as their male counterparts are.

prisoners and condemned prisoners are allowed only a limited number of outside hours, during which they may be required to collect water and undertake tasks such as washing clothes, which limits the time for exercise. It can be argued that condemned prisoners are most in need of fresh air and physical stimulation due to the reported distress and mental anguish they feel as a result of their sentence, conditions in prison and confinement.⁵⁰⁵ YOs also complained about the limited time they receive for exercise and sporting activities because YOs in many remand prisons are required to remain indoors for most of the day in order to restrict their mingling with adult prisoners⁵⁰⁶.

POPC has a large playground, which was mostly rented out to civilians and four prisoners were assigned to maintain the playground, by mowing grass etc. Prisoners use the playground only twice a year when they have an open prison visit or during the Avurudu (New Year) festivities. ACP contains a swimming pool which is not for the use of prisoners but for the use of prison officers and can be rented out to civilians. KOPC has a badminton court, and one officer said that the inmates use the court, but this could not be verified as the Commission did not observe inmates playing there during the time of inspection, thus indicating that even where facilities such as swimming pools and courts are available in prisons, they may be off limits to prisoners. In ARP, inmates requested sports equipment such as volleyballs from the Commission. Inmates have also further suggested that prisons must provide recreational activities for inmates in the form of daily exercises in the mornings.

The Commission observed in prisons island-wide that prisoners use makeshift gym equipment in the absence of proper weights and machines. Often bottles filled with sand would substitute weights and they would make space under the stairs for the gym. However, in ACP, each ward section (A, B, C etc) had one exercise machine for the whole section. WCP has a fully-functional, newly built gym and before the commencement of a workout, each inmate's fitness level is assessed by one of the three trainers, who would then recommend a suitable workout. Two prisoners functioned as trainers, even though they do not have formal training. There was one cycle machine, two ab shapers and two cross trainers. More than one hundred people frequent the gym every day, which opens at 0900h and an inmate is allowed to spend an hour working out. When asked about the other sporting activities that are available, the trainers stated that cricket, football and volleyball would take place every other day. MCP too contained a fully equipped gym, funded by a local Christian organisation, which was available to prisoners on a roster basis, with each ward allocated an hour and half to use the gym. In most prisons the Commission was informed that the prison would facilitate prisoners taking part in Annual Inter Prison Sports Competition, and it was mentioned as an entertainment event in a document the Commission received from the DOP.

⁵⁰⁵ For a detailed discussion on detention conditions of condemned prisoners, please refer chapter Prisoners on Death Row.

⁵⁰⁶ For a detailed discussion on the conditions of young offenders in adult prisons, please refer chapter Young Offenders.

3.5. Rehabilitation of drug dependent persons

“I was in a relationship for four and a half years to someone who was addicted to drugs. They eloped and got married to someone else. I started using drugs because of that shock. I went to a group of friends who were addicted to drugs. It would not have happened if I went to stay with other friends of mine. That’s how I started using drugs. I used drugs to forget what happened. After that I got tired of everything.”

Convicted, NRP

Honestly, for convicted people there should be some form of rehabilitation. The people who come in here for drugs, just end up doing drugs again. They need to be rehabilitated. They need to be taught how to get over it. Not just how to pass their sentence. They don’t have any work here. When they go out, they will again steal and rob to survive”.

PTA Remandee, NMRP

Courts may order drug dependent persons to be sent to Kantharkadu Drug Rehabilitation centre as a part of their sentence, or according to Circular No. 22/2016, the SP should transfer persons sentenced from three months to one year for the use of drugs to Ambepussa Paboda Meth Sewana Treatment and Rehabilitation Centre, subject to availability of space. This section discusses the rehabilitation programmes initiated by the prisons from the sample of institutions, for prisoners who are not sent to the above-mentioned institutions.

Circular No. 24/2013 states that Welfare Officers should implement special drug rehabilitation programmes for the benefit of drug dependent persons, with the help of organizations who work in that field. The Commission observed drug rehabilitation programmes in place at MCP, WCP, ARP and WWC. WCP had a dedicated ward for those who are undergoing the rehabilitation programme and three days a week, an external counsellor from NDDCB visits WCP. The MCP PH also contained a dedicated drug rehabilitation ward where the drug rehab programme was conducted; the overseer of that ward was a former Buddhist monk (who was a convicted prisoner), while the drug rehabilitation programme is mainly conducted pro bono, by a retired commissioner of prisons Mr. Sarathchandra on his private capacity.

When examining the daily schedules prescribed as part of these rehabilitation programmes, the Commission observed the treatment plan comprised mainly of religious, spiritual or reflective activities and a medical treatment or response to the problem of substance abuse and dependence was notably absent. For example, the substantive sessions of the WWC drug rehabilitation programme involved group counselling/individual counselling, self-reflection and sharing ideas with ‘rehabilitated’ inmates who have already completed the programmes. The complete daily schedule in place under the drug rehabilitation programme in WWC is attached as Annexure [Annex 16.1]. An officer from the NDDCB oversees the drug rehabilitation programme in WWC and comes to the prison six days a week from 0800h to

1730h. There is a Daily Performance Sheet to evaluate the progress of each prisoner during the rehabilitation programme, which is attached. [Annex 16.2.]

An officer from the NDDCB visits ARP too and undertakes individual, group and family counselling, educational programmes (eg: economic management) and follow-up. The Commission was informed that group counselling usually entails gathering about six to ten prisoners in a room and discussing topics such as misconceptions around drug use. In such a gathering, recidivist drug dependent persons would talk about the reasons that made them use drugs again and video clips are used to facilitate discussion.

The follow up programme conducted in ARP is such that after they are released from prison, the prisoner can request to be sent for a three-month residential programme in one of the four centres operated by NDDCB. If the person does not wish to go to a centre and wants to stay with their family, an officer from NDDCB is sent to the home regularly to monitor the progress made by the individual and identify indications of relapse. They also call the parents/family to their office to provide counselling and advice. Thus, such programmes have the benefit of providing aftercare facilities to prisoners who are undergoing treatment in prison upon release. However, the NDDCB struggles to fulfil its potential and expand services to all districts due to limited funding and human resources, and is not able to conduct efficient monitoring of all persons who have undergone drug treatment, which prevents constructive evaluation of the programme.⁵⁰⁷ POPC reportedly has a permanent Counsellor assigned by the NDDCB.

Prisoners recommended that programmes highlighting the dangers of drug use should be conducted in all prisons, particularly for young people, so they are aware of the risks of drug use.

4. Assistance to the families of prisoners

Prisoners from around the island, specifically male prisoners whose families were suffering financial difficulties due to the breadwinner being imprisoned, lamented that the impact of their sentence was affecting the livelihood of their families. Many prisoners stated that it caused them great mental anguish. The DOP has proved to be cognizant of this matter as indicated by Circular 06/2011 which states that incarceration results in the dependents of prisoners becoming helpless and causes the breakdown of families. The breakdown in turn impedes the rehabilitation of prisoners. It further states that the Ministry of Rehabilitation & Prison Reforms, Ministry of Social Services and Social Welfare and the DOP have introduced a programme to provide assistance to the families of incarcerated persons.

During the orientation programme conducted soon after a person is admitted to prison, during which prisoners should be informed about the family welfare programme, Rehabilitation Officers are required to collect details of the family members of prisoners who require assistance. Rehabilitation Officers are asked to prepare a form inquiring about the

⁵⁰⁷ For a detailed discussion on the constraints of the NDDCB, please refer chapter Non-custodial Measures.

details of their dependents for prisoners to complete before they are forwarded to the MOJ and Commissioner of Rehabilitation.

The Commission was informed by the Chief Welfare Officer at WCP that if a prisoner requests financial or livelihood assistance for their family, a Rehabilitation Officer from the prison closest to the family's residence will be tasked with visiting the family and conducting an assessment of their needs. The Rehabilitation Officer will present the report at the monthly Prisoner Welfare Committee meeting and the members of the committee will decide what type of assistance will be awarded and to whom, depending on the availability of funds.

The Commission was informed that one of the primary means of assistance provided to the children of long-term prisoners and prisoners on death row is in the form of educational scholarships and assistance from NAITA, Department of Social Services, etc.

The Prisoner Welfare Committees around the island also play an active role in the provision of services and provision of assistance to the families of prisoners. The Committees are comprised of volunteers, religious leaders, judges and private donors, often including banks and other private institutions, which raise funds to provide assistance for families of prisoners. For instance, to commemorate one hundred years since its formation in 2018, the committees endeavoured to build one hundred houses for long-term prisoners' families. A portion of the funding for the activities and projects of the Welfare Committees is contributed by the government and the rest is sourced by the volunteers through donations and fundraising.

5. Reintegration into society and aftercare

SMR 107⁵⁰⁸ states that from the beginning of a prisoner's sentence, consideration shall be given to his or her future after release. SMR 108⁵⁰⁹ states that services and agencies, governmental or otherwise, which assist released prisoners in re-establishing themselves in society shall ensure that released prisoners are provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.

⁵⁰⁸ SMR 2015, r 107, 'From the beginning of a prisoner's sentence, consideration shall be given to his or her future after release and he or she shall be encouraged and provided assistance to maintain or establish such relations with persons or agencies outside the prison as may promote the prisoner's rehabilitation and the best interests of his or her family'.

⁵⁰⁹ ibid r 108(1), 'Services and agencies, governmental or otherwise, which assist released prisoners in re-establishing themselves in society shall ensure, so far as is possible and necessary, that released prisoners are provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.'

(2) The approved representatives of such agencies shall have all necessary access to the prison and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his or her sentence.

(3) It is desirable that the activities of such agencies shall be centralized or coordinated as far as possible in order to secure the best use of their efforts'.

SMR 87 states that before the completion of the sentence, it is desirable that the necessary steps be taken to ensure the prisoner's gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same prison or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid. SMR 90 states that the duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the released prisoner sufficient and efficient post-release support directed towards the lessening of prejudice against him or her and towards his or her social reintegration. These three Rules collectively call for an effective pre and post release care plan. Prisoners have supported this view by stating that the rehabilitation process in prison must be designed so as to enable the social re-integration of prisoners as respectful citizens.

Circular No. 24/2013, states that it is a duty of the Welfare Officers to conduct pre-care/pre-preparation programmes for prisoners who are about to be released. Circular No. 13/2015 calls for a post release care programme to be implemented for all prisoners who enter the prison (previously it was only for prisoners with a sentence of two years or more). This programme also includes family welfare and stipulates that the support of the regional Community Corrections Officers should be obtained.⁵¹⁰ Completed post release support forms (completed prior to three months from release) to be forwarded to MOJ and Commissioner of Rehabilitation.

The Commission was also informed that the Prisoner Welfare Committees appointed for each prison assist prisoners find jobs and housing post release, and also provide them with necessary tools and equipment they may need to engage in self-employment.

The Commission was informed that Rehabilitation Officers visit the residence of the released prisoner who is requesting assistance and assess their capacity and their family background, i.e. whether there is enough space for the prisoner to set up his own workshop/business, whether the family is willing to support his future plans etc. The respective prisoner will then be granted the required tools (dancing kits, salon kit, carpentry equipment etc.), based upon the decision of the Welfare Committee after examining the Rehabilitation Officer's report. The Rehabilitation Officer also undertakes monthly monitoring and evaluation of the prisoner's progress and to observe whether the prisoner is making use of the assistance awarded to him and earning an income. The Rehabilitation Officer is required to send quarterly reports to the DOP. The Commission was unable to verify whether this happens in practice but given the severe shortage of staff and the resultant struggles Rehabilitation Officers face in performing their functions and responding to the needs of prisoners, it is highly unlikely that this initiative is being implemented effectively and is accessible to all released prisoners.

⁵¹⁰ Department of Prisons, Circular No 13/2015, To implement the programme the Circular called for information on every prisoner who enters the prison; name and number, offence and sentence, sentenced date, date of release, address, Divisional Secretariat, Grama Niladhari Division.

6. Challenges to rehabilitation in prison

"I'd say in the current prison system, there is no proper rehabilitation. We severely lack resources - not enough funding, not enough staff, not enough support from the state institutions that should be cooperating with us, and there are too many structural issues and not enough will from both the officers and the prisoners because of all that is lacking".

SP, WCP

It is observable that while the prisons and Rehabilitation Officers have undertaken creative and useful approaches to allow prisoners to spend their time in prison productively so they are equipped to turn away from recidivism upon release, the correctional institutions face a number of challenges that hinder the success of these measures.

The root of these challenges is the lack of will on the part of the state to meaningfully invest in effective rehabilitation in prisons, which appears to be due to the belief that retribution and deterrence is the sole form of crime prevention. There is need to consider the substantive body of research in criminal theory, social sciences and correctional behaviour which indicate that adverse prison conditions and punishment do not deter reoffenders who return to the same conditions which contributed to criminal behaviour in the first place. The retributive approach to deter crime coupled with ineffective prison management can create criminals rather than correct them and the exponential potential of providing prisoners with a meaningful chance to reform during their sentence is ignored. Instead, prisoners are mistreated, stigmatised and labelled as outcasts⁵¹¹, a burden which hinders them from integrating into society and living as productive citizens who contribute to the development of the country.

As indicated by the challenges outlined below, without a correctional system that is built upon the belief that prisoners are deserving of equal access to educational and skills training opportunities as well as remedial services catered to their individual needs and capacity, the prison system will fail to achieve its legitimate purpose and the rise of criminal behaviour and corruption from within the premises as well as recidivism in society will increase.

6.1. Lack of funding and resources

The Commission observed that the lack of funds provided to prisons to organise and execute rehabilitation programmes was one of the primary impediments to the correctional objectives of the DOP. Inadequate funding also meant that resources and equipment needed for established programmes could not be procured or the equipment currently being used by prisoners, cannot be repaired.

The lack of funds was said to be the main obstacle in implementing education programmes in prison. For example, the ARP Rehabilitation Officer mentioned that the Tamil class

⁵¹¹ For a detailed discussion, please refer to the chapter The Continuum of Violence.

previously conducted by the Zonal Educational Officer had to be stopped due to the lack of funds. The lack of funds prevents classes from being conducted consistently and by designated qualified persons, rather than Rehabilitation or Counselling Officers who also have a range of other functions and duties in the prison. Another critical issue identified with regard to the literacy classes is the lack of opportunities for inmates to continue their learning post-release and advance from basic literacy to more formal education. Furthermore, the Commission was informed that prisoners do not have adequate access to textbooks or study materials to prepare for their exam since these are not provided by the Ministry of Education. Instead, the prison officers have to secure books for the prisoners by requesting donations from NGOs and religious institutions, or bringing the textbooks they find in their own homes for prisoners.

With regards to vocational training, prison officers stated that the rehabilitation programmes offered in prison used to be of high quality and were of benefit to prisoners in the past but due to the overcrowding of virtually every penal institution, the quality of such opportunities has diminished over time as there was no proportional increase in funding for rehabilitation programmes.

The lack of separate rooms to undertake counselling sessions was highlighted by almost all officers as an impediment to effective counselling sessions. Currently, counselling is usually conducted in the Welfare Branch office space, a space which is shared by other officers and is not conducive to a private and confidential exchange of information between prisoners and Counselling Officers. Similar sentiments were expressed by officers of WCP who highlighted the lack of funding and resources as a hindrance to rehabilitation:

“Offices need to have better facilities. At least basic minimum decent working conditions. When we come here to work every day and leave in the evening, our mindset, our attitudes are shaped by the environment in which we work. Look at RC. There isn’t even proper partitioning of the offices. We are shouting here at RC. There is the Location Branch shouting at the other side. Welfare is stuck in the middle. [laughs] Welfare that is supposed to be doing rehabilitation. What rehabilitation can they do in here. [laughs]”.

6.2. Lack of adequate external educators, trainer and volunteers

The lack of funding devoted to educational and correctional programmes results in an inadequate number of external trained experts being hired for these programmes. According to the DOP Performance Report 2017, 120 Vocational Training Instructors (Grade I and II) are recommended to be employed within the DOP, forty-nine of these positions were vacant, and the scheme of recruitment is currently under review in order to mitigate this shortcoming. Due to these vacant positions, individual prisons often have to request instructors from the external entities mentioned above and if the requests for instructors are not met, prisons would not be able to utilise the existing facilities and equipment.

Similarly, prisoners have little opportunity to follow a formal curriculum and attend classes as in public schools. Prisoners completing the Ordinary or Advanced Level examinations do

not attend formal classes conducted by qualified professional teachers. Rather, classes are conducted in an informal manner within the prison by prisoners who were former educators and take the initiative to help aspiring students to prepare for the examinations.

The Commission recommends that, similar to the Suneetha Pasala at the Wataraka Youth Training School, national educational institutions are set up within the prisons and teachers are recruited by the Ministry of Education to conduct classes in accordance with the national curriculum which will allow prisoners to complete their disrupted school education.

6.3. Lack of prison officers

Prison officers play a fundamental role in the provision and execution of correctional services for prisoners, even if they are not experts or instructors but simply carrying administrative and operational functions. It is crucial to note that a range of duties are required to be completed in a prison on a single day, and if the lack of officers in prison requires existing officer to occupy multiple roles and functions, the impact of this will inevitably be felt by prisoners and their potential to be rehabilitated in prison⁵¹².

As illustrated below, most prisons do not have adequate cadre for Rehabilitation and Counselling Officers. Rehabilitation Officers are on the front line in fulfilling the correctional objectives of the incarceration system. Their functions include initial orientation, monitoring the psycho-social wellbeing of the prisoner, planning rehabilitation programmes and activities in the prison as well as conducting field visits and preparing documents for the early release applications of eligible prisoners. As demonstrated below, due to the lack of Counselling Officers in prison, they may also be required to undertake counselling for prisoners who require it. The lack of adequate officers therefore directly affects the quality of rehabilitation services that can be offered by the prison and their capacity to reform a prisoner before releasing them in order to ensure they avoid reoffending.

According to the DOP Performance Report (2017), the following vacancies of prison staff who directly engage in the counselling of prisoners were noted:

Table 16.2 - Counselling and Rehabilitation Officers in the DOP

Designation	Recommended no. of positions	No. of people currently in service	No. of vacancies	Steps taken to fill the vacancies
Chief Rehabilitation Officer (male)	5	1	4	No qualified officers
Chief Rehabilitation	2	-	2	No qualified officers

⁵¹² For a detailed discussion on the impact of short staffing on the prison administration, please refer chapter Challenges faced by the Prison Administration.

Officer (female)				
Rehabilitation Officer (Grade I)	13	12	1	No qualified officers
Rehabilitation Officer (Grade II) (male)	109	87	22	21 vacancies are to be filled by the open competitive exam. Approval has been granted to fill 18 vacancies through the exam. 4 male appointments 1 female appointment have been granted through the results of limited competitive written exam.
Rehabilitation Officer (Grade II) (female)	25	21	4	
Counselling Officers	7	-	7	To be recruited after SOR is approved.

As per the table above, the cadre allocation is only seven Counselling Officers and 121 Rehabilitation Officers for the entire prison system. Only seven positions for Counselling Officers is severely inadequate as there are thirty-five institutions that come within the purview of the Department, and more than 20,000 prisoners.⁵¹³ In the absence of Counselling Officers, Rehabilitation Officers conduct counselling in prisons⁵¹⁴. The Commission, when inquiring about the minimal number of Counselling Officers, was informed by the Commissioner of Rehabilitation that the incumbent Counselling Officers are former prison officers who completed a counselling course conducted by the DOP and were then absorbed into the DOP staff as resident Counselling Officers. Visiting Counselling Officers are also sourced from the NDDCB.

Another example of the impact of inadequate prison officers on rehabilitation in prison and thereby the conditions of imprisonment. The availability of staff directly affects the number of outside hours for prisoners, as observed by the Commission at JRP. In JRP, all prisoners, regardless of their category, are allowed to spend only thirty to forty minutes outside (except those who work at the kitchen, the offices etc.). According to JRP officers, remandees are allowed two outside hours per day, from 0830h to 0930h and 1300h to 1400h, in addition to which their wards will be opened to serve meals. However, inmates claimed that they are allowed outside only during 0830h to 0930h and that with the delays in unlocking they can spend only about thirty to forty minutes outside. It was further revealed that 0830h to 0930h

⁵¹³ As of February 2019

⁵¹⁴ For a detailed discussion on the impact of the lack of officers on the rehabilitation of prisoners and the challenges faced by the administration due to staff shortages, please refer chapter Challenges faced by the Prison Administration.

is the time allocated for both A1 and A2 Wards (which housed about 255 remandees altogether), and therefore both wards might not be able to spend one hour outside every day. Within that limited time, they also have to collect drinking water and dispose garbage and toilet buckets. Inmates alleged that the officers beat them if they do not return to the ward on time. When this issue was raised with the SP, he stated that there is on-going construction because of which there is a risk of contraband being passed to the prisoners by construction workers, which they are unable to monitor due to the severe shortage of officers. Hence, they have to limit the outside hours of prisoners.

It should be noted that transferring a large number of prisoners to a certain prison, similar to the transfers to ACP that took place in July 2018, without increasing the number of prison officers assigned thereto accordingly, may in all likelihood result in restricted outside hours for prisoners therein, as the officers struggle to cover all duties. For example, the ACP SP mentioned that most of the newly transferred prisoners are from Colombo and Kandy, resulting in officers taking longer periods on escort trips to courts and clinics, which limits the number of officers available on site to perform duties within the prison throughout the day. Therefore, such large-scale transfers of prisoners should be carefully planned, taking into account all relevant factors, to avoid impinging on the rights of prisoners and placing severe strain and stress on officers.

6.4. Lack of training for Rehabilitation Officers

Although the Rehabilitation Officers in POPC were said to have followed a diploma in counselling, Rehabilitation Officers in prisons island-wide mentioned that they need further training on counselling, mainly because this is not their primary function but a role they are required to occupy when there is a shortage of Counselling Officers. The KGRP Rehabilitation Officer mentioned, "We need counselling trainings. We were trained to counsel only for two days. It is not enough. We need professional training on counselling".

It was brought to the Commission's notice by officers of the Rehabilitation Division at the DOP, that in the 1980s every newly recruited Rehabilitation Officer underwent a three-year training and received a diploma in rehabilitation, a practice that is no longer in place. Currently, the in-service Rehabilitation Officers receive ad-hoc training and programmes are organised based on their capacity needs, rather than routine periodic training.

It was also mentioned that there are no foreign training opportunities in rehabilitation or correctional programmes to which Rehabilitation Officers have access. A majority of the opportunities were reportedly allocated to uniformed officers - "if there are six slots available, maybe one Rehabilitation Officer will have the opportunity to go for the training, sometimes not even one. Female Rehabilitation Officers rarely get to go as there are very few women on the staff", stated one officer from the DOP. It was said that even though the training is in correctional programmes, it is uniformed officers who usually go but they do not apply the knowledge they have gained during the training nor disseminate it to other officers, thereby undermining the purpose of foreign training programmes. Officers of the DOP Rehabilitation Division highlighted the need to prioritize Rehabilitation Officers for correctional/rehabilitation training programmes conducted abroad, as this is most relevant to their functions and duties in the prison, compared to other officers.

6.5. Imprisonment vs rehabilitation for drug dependent persons

"I feel that most of the people who come here suffer from financial difficulty which forces them to engage in illegal activities such as drug dealing. Around 200-300 people have been abandoned by their family members. Even after being given bail, they have nowhere to go as family members do not accept them. We can take them and train them; within six months they can learn a skill. Then once he is released, he can go out and find a job. If we want to get rid of drugs, engage them in jobs. If we are occupied with something, our thoughts will not fall towards bad things. If they don't have a job, they get together and engage in unwanted discussions which give them unwanted thoughts".

Remandee , NMRP

The Commission observed that sending drug dependent persons to prison results in them being deprived of access to medical treatment and rehabilitation for their drug dependence and withdrawal symptoms, all the while being supervised by officers who are not trained in managing drug dependent persons. Many prisons, even the ones that provide in-house drug rehabilitation programmes, deal with drug dependent persons, particularly those suffering withdrawal symptoms, by placing them in solitary confinement, which has the effect of exacerbating their condition.⁵¹⁵ (eg: KRP PH Special Cells). A senior officer at NMRP described their lack of capacity and training to handle those with substance dependence thus:

"Does the country expect prison officers, who know nothing about drug rehab and treatment, to run programmes here for remandees who come here for a couple of months or years? [...] Police just arrest and take them to court. Court remands. Police objects to bail. That's it. It's as if their hands are free after that. It's prison's problem after that. We have to whip up solutions from thin air. It's a joke".

A senior jailor in WCP expressed his frustration with the inadequacy of drug rehabilitation in prison saying that:

"Instead of convicting people and sending them to prisons, courts should send them to rehabilitation camps or treatment camps – for drugs, weed, alcohol, *kasippu* addiction. What's the point in sending them here? They come here, spend two weeks, the state pays for their housing, we run around to follow procedure for them, then they go out, and come back. It's the same thing again and again. Like a cycle."

⁵¹⁵ For a detailed discussion, please refer to chapter Death in Prison.

The vicious cycle of substance abuse among prisoners who do not receive the treatment they require was explained by a prison officer from WCP, who stated:

"Something we have seen is that the rate of rehabilitation is quite less in Colombo areas, compared to out of Colombo areas. It's because almost all short-term prisoners are in for drug addiction. They come here and go back but they go back to the same environment in which they got addicted to drugs in the first place. The Colombo areas have a high level of social decay that we don't see much in the rural areas."

Prisoners also complained about being held in the same wards with drug dependent persons, arguing that non-drug dependent persons would become influenced to indulge in the consumption of drugs, thereby increasing the risk of breeding criminal behaviour and criminality in prison. They stated that placing drug dependent persons in prison, rather than sending them for rehabilitation, creates a demand for the drugs to be smuggled into prison. The following quote by a senior officer from WCP explains this phenomenon:

"We need more buildings to house prisoners in order to segregate them. Drugs addicts can then be separated from others. Now what happens is a young man coming in for a small theft case is going out as a drug addict because he has been influenced by the drug addict. So, he is coming in as an addict the second time, going out and coming in as a drug dealer the third time."

6.6. Lack of individualisation of rehabilitation

As indicated by the SMRs, treatment of prisoners in prison should be in manner that encourages their sense of responsibility and allows them to maintain their self-respect. In order to maintain their self-respect and self-esteem, it is crucial that the provision of correctional services be prioritised for all groups of prisoners rather than for a few.

SMR 92⁵¹⁶ states that the social and criminal history, physical and mental capacities and aptitudes, personal temperament, the length of sentence and prospects after release should be considered when deciding the most suitable rehabilitation programme for a prisoner. SMR 94 requires a programme of treatment to be prepared for each prisoner upon

⁵¹⁶ SMR 2015, r 92(1), 'To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his or her social and criminal history, physical and mental capacities and aptitudes, personal temperament, the length of his or her sentence and prospects after release.'

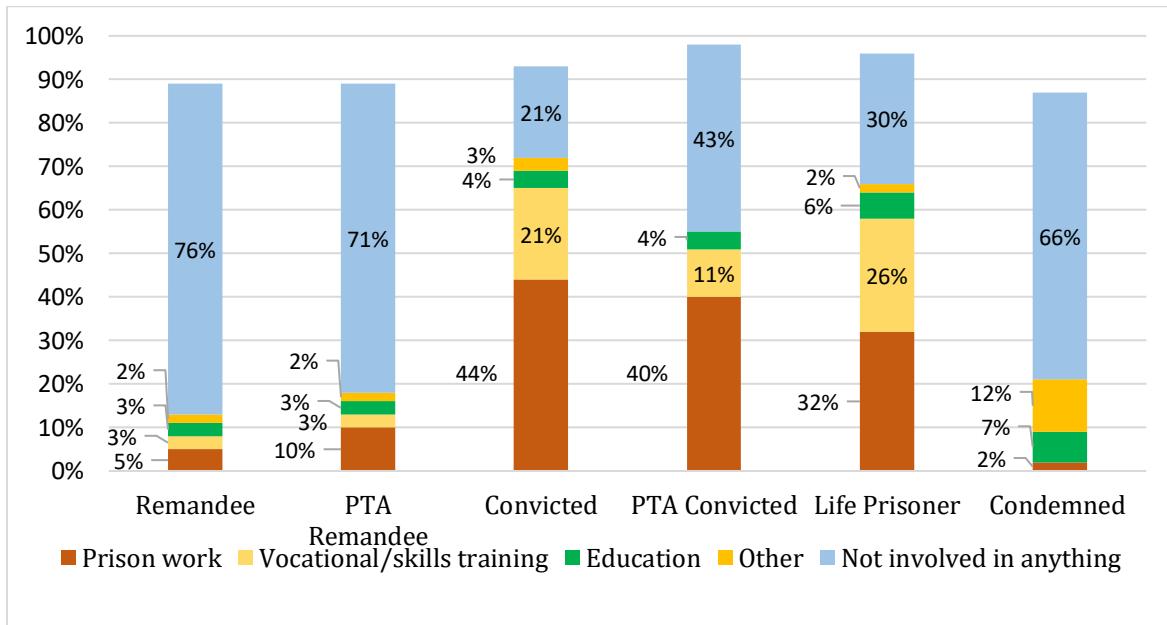
(2) For every prisoner with a sentence of suitable length, the prison director shall receive, as soon as possible after his or her admission, full reports on all the matters referred to in paragraph 1 of this rule. Such reports shall always include a report by the physician or other qualified health-care professionals on the physical and mental condition of the prisoner.

(3) The reports and other relevant documents shall be placed in an individual file. This file shall be kept up to date and classified in such a way that it can be consulted by the responsible personnel whenever the need arises'.

admission, after a study of the personality of each prisoner, in light of the knowledge obtained about his or her individual needs, capacities and dispositions. Both these Rules call for individualization of rehabilitation opportunities. In addition, the Handbook on Prisoner File Management by UNODC mentions that a prisoner's personal file must contain a description of the "plan" that is to be followed by the person during the period of detention/imprisonment, to achieve a reduced security status classification, and to prepare for the return to the community, including periodic evaluations of progress over time.

The Commission noted that efforts to individualize rehabilitation were minimal and were limited to drug dependent persons undergoing a basic rehabilitation programme in prison, or SPs inquiring about the prisoner's preference and former profession when allocating prison work and vocational training. The Commission notes that prisons face financial and human resource constraints which prevent rehabilitation from being tailored to the specific needs of every prisoner. The rehabilitative programmes highlighted above are limited as there is only a small range of vocational training and remedial activities.

Graph 16.14 – Male respondents on what rehabilitative activities they are engaged in prison

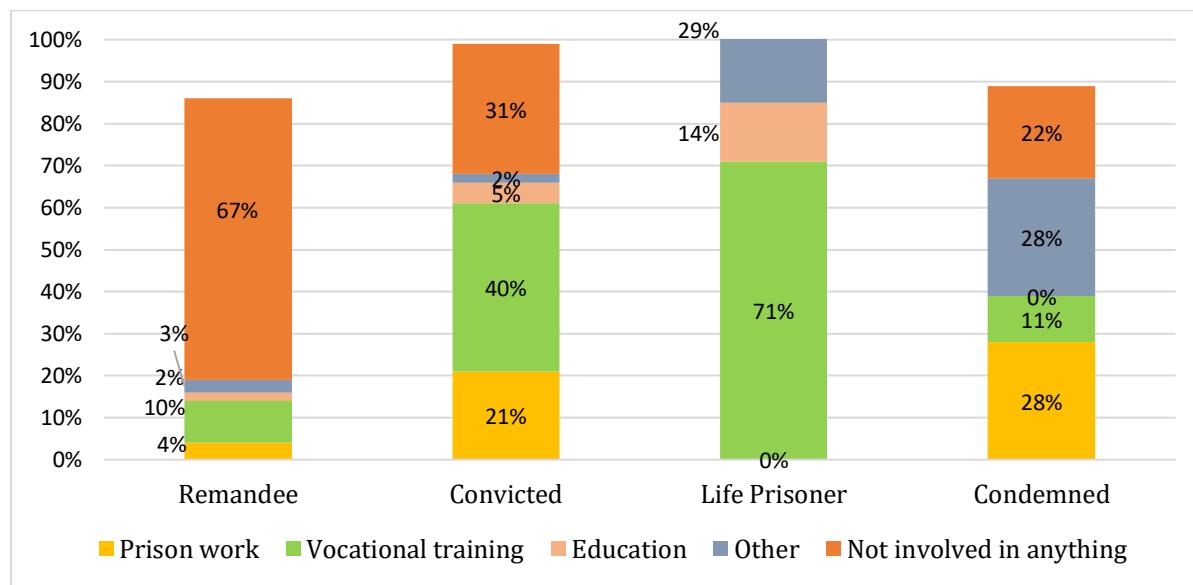


The Commission also noted that the majority of rehabilitative opportunities were only available for the benefit of convicted male prisoners, who comprise the largest demographic of the population of prisoners. For instance, inmates that fall under the category of special prisoners and condemned prisoners do not have the same access to rehabilitation programmes in prison. This is primarily because they are locked in their wards/cells for up to twenty-three hours per day and only allowed one hour of outside time. This results in condemned and special prisoners not engaging in any meaningful activity for most of their time in prison, which has an adverse impact on their mental and emotional wellbeing. For instance, 71% PTA remandees, who are considered special prisoners, and 66% of Condemned prisoners stated that they are not involved in any activities.

Where unconvicted prisoners are concerned, the DOP is not obliged to provide vocational training opportunities for remand prisoners as they have not yet been convicted of a crime and therefore, do not need to be rehabilitated. For example, as indicated in the graphs, 76% remandees do not engage in any productive activity. However, all remand prisons make attempts to provide remand prisoners with access to rehabilitation programmes, to allow them to make use of the extended period of time spent in prison. For instance, vocational training courses of three months (hair cutting, tailoring, ornamental fishery, LED bulb production, aluminium processing, and wood carving) were said to be available in remand prisons.⁵¹⁷ This would also minimise the social cost of lost productivity of persons held in remand.

Furthermore, the length of time spent in prison by remand prisoners is not definite, as they may be released on bail at any point, which restricts the ability of prisons to provide programmes that are of several months' duration and therefore more comprehensive. According to Rehabilitation Officers of the DOP, the unpredictable nature of remandees' imprisonment term is a reason for their lack of motivation to participate in available programmes, which in turn disincentivises the entity conducting the programme.

Graph 16.15 – Female respondents on what rehabilitative activities they are engaged in prison



⁵¹⁷ According to the said document, the following vocational training courses are available in prisons island wide: carpentry – seventeen programmes, bakery – eight, masonry – sixteen, welding – twelve, tailoring – thirty-two*, hair cutting – thirteen, plumbing – eight, wood carving – three, shoe manufacturing – two, economical ceiling manufacturing – two, weaving – three, polishing furniture – one, house wiring – sixteen, ornamental fishery – five, motor mechanic – one, aluminium processing – four, electrical – three, LED bulb production – three. The Commission has also come across all types of the aforementioned programmes, including shoe manufacturing, economical ceiling manufacturing, ornamental fishery and aluminium processing.

* The tailoring programme is six months long and so in many prisons, two programmes are conducted in a year.

Due to the small number of female prisoners in the system, about 6% of the total population, their rehabilitative and reform needs are not prioritised. Majority of the vocational training opportunities for women were limited to a few gender stereotyped courses, such as sewing and handcrafts – the post release utility of which is minimal. Educational and literary classes for women are not conducted by qualified external entities, but mostly in an informal manner by other prisoners or Rehabilitation Officers.

The monotony and lack of mental stimulation can also severely impede the mental health and well-being of condemned prisoners and long-term remandees. Furthermore, if prisoners of these two groups are released from prison, they could potentially grapple with loss of income during time spent in prison and estrangement from family relationships. The need to individualise rehabilitation so as to engage PTA (?) remandees and condemned prisoners and provide more opportunities for these groups to engage in skills and training during their time in prison is vital to the protection of their well-being as well as to maintain order in the prison – where prisoners are working towards learning a certain skill or following a language course and keeping themselves occupied during the day, there would potentially be less room for creating disturbances in the prison.

Another way in which the lack of individualisation manifests is that, in most prison libraries, there was a serious lack of diversity in the selection available; the collection of fiction was found to be especially lacking, with some prisons having a surfeit of religious books and textbooks, and some non-fiction. A sufficient number of Tamil and English books were not observed in almost all prisons and the lack of adequate reading material was a common concern of the foreign nationals.

In another instance of lack of individualisation, religious programmes are often observed to be the main focus of the rehabilitation plan in a prison, without catering to the needs of persons who lead a secular life. There exists the perception that religious education is the sole means for an offender to “become a better human being”. This is detrimental to those who lead a secular life or do not wish to practice their faith in prison, and can seriously harm their sense of self. This is therefore contrary to the SMR requirement for rehabilitation to be individualised, as it does not cater to the specific requirements of non-religious or non-practicing prisoners. Since prisoners have minimal access to remedial programs inside prison, in the Sri Lankan context, where religion and spirituality are intimately tied to correcting behaviour and reform, it is important for all prisoners to be able to fulfil the needs of their religious worship and faith. When a group of prisoners are not allowed the means to do this, self-fulfilment and self-determination is impeded which restricts the potential of rehabilitation.

Furthermore, the provision of religious education and programmes is primarily for Buddhist prisoners and education and literacy classes are conducted in Sinhala at most prisons. The restricted capacity of rehabilitation does not cater to the needs of a multi-religious and multi-lingual prisoner population, and hence the impact and success of rehabilitative opportunities would be limited because not all prisoners are able to benefit from existing general and non-personalised programmes.

In order to provide an individualised rehabilitation plan for each prisoner, prisons would require more Rehabilitation Officers as well as uniform officers, who need to undergo comprehensive training in rehabilitation to strengthen the process and cater to a prisoner's personal requirement and skill set upon admission. Funding would also be required to ensure a broad range of activities are available for prisoners to choose from as well as support from external entities and community organisations.

6.7. Minimal involvement of the community

SMR 88 states that the treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted to assist the prison staff in the task of social rehabilitation of prisoners. It further states that social workers should be connected to every prison to undertake the duty of maintaining and improving all desirable relations of a prisoner with his or her family, and with valuable social agencies, and steps should be taken to safeguard the rights relating to civil interests, social security rights and other social benefits of prisoners.

Circular No. 05/2014 states that the assistance of recognized and approved voluntary social service organizations should be taken to strengthen the spiritual and counselling programmes in prisons. The contribution of the community and local organisations to the rehabilitation of prisoners in prison was primarily observed to be in the form of donations. For instance, the Commission was informed that in WCP, the Buddhist temple, Hindu temple, church as well as the gym and the children's day care centre in the female section were all constructed and established with the help of donations from local organisations and private entities. The lack of funding with which the DOP grapples means that it is dependent on generosity of the community to arrange for services which they cannot provide; without the assistance of such organisations, prisoners would not have access to spaces for religious worship, nor provision of toiletries and sanitary napkins, which are primarily received by the prison through donations due to the lack of budgetary allocations for the same.

However, the Commission observed that the provision of funding as the sole means of contribution by the community was inadequate; local organisations and NGOs should be allowed better access to prison, where they may be allowed to conduct remedial and rehabilitative programmes and engage in activities with the prisoners, thereby reducing the burden on the prisons to conduct such activities. This would have the added benefit of prisoners becoming more visible in the public domain, rather than being outcasts, with the public taking a greater interest in the rights of prisoners and their reintegration.

One example of a positive involvement of the community in the rehabilitation process is the debates organised between prisoners from PCP and law students of the Peradeniya University, which is one of many similar events for prisoners, with whom the University comes into contact often since a number of prisoners are employed at the Peradeniya University on external employment schemes arranged by the prison. This highlights the need to involve community organisations in the rehabilitation of prisoners by ensuring the

continued participation of prisoners as members of the community, rather than isolating them from the public eye.

7. Impact of rehabilitation on post release employment and support

One of the foremost aims of rehabilitation and correctional services is to make prisoners more employable, by allowing them access to educational and vocational opportunities that will increase their options of employment. Prisoners who have been removed from society for a long period of time and carry the trauma and stigmatisation of imprisonment are already at the risk of being discriminated from employment opportunities. Such conditions can increase their likelihood of resorting or returning to criminal behaviour in order to meet their daily livelihood needs.

If the educational and vocational opportunities available for prisoners in prison are not of high quality and do not meet the current needs of the labour market, then not only will the ultimate objective of crime prevention remain at risk, but the amount of money and taxpayer funds spent on providing futile rehabilitation programs will be wasted. This reiterates the need for the public to be aware of the functioning of the DOP because taxpayer funds devoted to the correctional service have to contribute to crime prevention and make the society safer.

As evinced by the type of programmes available for prisoners in prisons, one shortcoming of the vocational training opportunities is that employment opportunities available to them post release may not necessarily generate income that enables them to live dignified lives. Thus, prisoners would essentially be limited to a certain sphere of employment, due to which they may not wish to participate in such programmes. The minimal impact of these programmes on the post-release livelihood of the prisoner has contributed to vocational training programmes not achieving their full potential as a rehabilitation and reintegration mechanism.

The Commission was informed by the SP of WCP Industries that even in skills-based sectors, the professions with high demand, such as mobile phone repairing, computer hardware maintenance, air conditioner maintenance etc. which would positively impact the earning potential of prisoners upon release are not taught in prison. Moreover, programmes for female prisoners are limited to a few gender stereotyped courses, such as sewing and handcrafts.⁵¹⁸ The Commission further observed that those who have successfully completed the available vocational training courses would face difficulties in securing employment upon release, because in the skills-based sectors, employers would often require NVQ Level 4 certificate as a professional qualification. Most prisons however grant only Level 3 certificates, because practical training of six months is often required to award Level 4 qualification, to which prisoners do not have access while in prison.

The Commission also noted there is limited opportunity for a prisoner who is not able to secure a job using the skills they learnt in prison to start his own enterprise, due to the lack

⁵¹⁸ For a detailed discussion, please refer chapter Women.

of ability to secure capital, tools etc. This is particularly problematic since prisoners have minimal financial support/stability upon release, having spent many years in prison without earning an income and would face considerable challenges securing credit. This is illustrated by the following exchange that took place in MCP:

"A: My children have grown up. They are married and have their own children. Since I have learnt this, I can get a sewing machine and make a living out of it. That's my hope.

Q: You need only a machine?

A: Yes, I need only a machine. After my rehabilitation and release, I don't know whether I would get a machine from here, I'm not sure."

Thus, the lack of an institutionalized post-release support mechanism renders the underlying aim of providing vocational training, i.e. the reduction of the rate of recidivism, ineffective, as prisoners may be inclined to reoffend when they do not have any means of earning an income. This is evident in the story of a prisoner released in December 2018.

One prisoner, who had been imprisoned many times during a forty-year period, received a pardon in December 2018 upon the recommendation of the Commutation Committee for long term prisoners. He stated to the Commission that he was imprisoned in 1968 for the first time, at the age of seventeen, for allegedly stealing an Anthurium plant from a house. Since 1968, he was convicted multiple times on charges of theft, and also because he had attempted to escape from prison; he stated that he had spent less than seven years outside prison in the last fifty-one years.

He stated he would like to utilise the skills he has acquired while in prison, as he worked in the arts and crafts '*Yahavinoda*' Section in WCP. The arts and crafts division in WCP does not follow a formal training program, but is based on prisoners sharing their skills and knowledge of using natural material, such as coconut shells and wood, to make pens, rings and other decorative ornaments.

There are no provisions for this prisoner to receive post release support from the government, except from the Prisoner Welfare Committee, through which citizens make donations to the prisoner upon request by the DOP to support their livelihood. This prisoner compiled a list of equipment he would like to receive from the DOP Rehabilitation branch in order to start a small business using his arts and crafts knowledge. The Rehabilitation Officers informed the Commission that the request will be forwarded to the prisoner welfare committee. Except for the goodwill of the committee members, there is no other post release support system to help the successful social integration of a prisoner.

8. Reimagining rehabilitation

The Commission appreciates that in order to restructure the existing system of rehabilitation, it is necessary to resolve the inherent structural weaknesses that prevent the

long-term success of the initiatives taken by the prison. The primary starting point would be an increase in financial resources for such programs, which would ensure access to better resources and equipment and an increase in the number of qualified staff members and training for staff. The involvement of the community and local organisations in the provision of rehabilitative programmes must also be sought. This requires political will to view the primary purpose of the penal system as rehabilitation. The Commission thus recommends the following recommendations which the DOP could consider to improve the system of rehabilitation in prison, in the context where structural challenges in the system have been addressed. The UNODC Roadmap for the Development of Prison-based Rehabilitation Programmes guidebook is a useful resource in this regard and the Commission recommends the use of such international standards and comparative examples by the DOP to reimagine rehabilitation in prison.

Education

As highlighted above, the Commission observed that majority of prisoners possess lower levels of literacy compared to the national rate of literacy. While imprisonment may provide the ideal opportunity for prisoners to complete their interrupted education, research suggests that the low numbers of prisoners participating in education programmes in prison might be because prisoners choose not to participate.⁵¹⁹

One key method to encourage prisoners to participate in educational programs would be by tying participation to the prospects of sentence reduction and early release. While participation in educational programs is currently evaluated during assessments by the License Board, the assessment takes place in a subjective and ad hoc manner, without transparent and outlined criteria for assessment that would motivate prisoners. Thus, the sentence reduction should take place using an objective and calculated process where progress of prisoners is quantified and their sentence is proportionately reduced. One option is to make the calculation of remission marks, that is currently based on an outdated form of measuring productivity in prison, dependent on examination marks, attendance in classes and the completion of assessments. The Commission came across an example, where prisoners in Brazil are encouraged to read more books and earn a reduction of four days in their sentence for every book they read and write about, with the maximum number of books for which they can earn credit being twelve books.⁵²⁰ Educational programmes should focus on assignment-based approaches to learning and earning marks, as well as practical approaches, through the use of presentations, debates, projects, arts and crafts, etc. which enables prisoners to have access to a range of learning methods that allow them to explore the options that would work best for them. The prisons should also explore different options of showcasing the work of prisoners, by collaborating with newspapers to publish articles written by prisoners, allowing prisoners to engage in internal oratory competitions and quizzes against other prisoners or even external groups and organisations where such opportunities can be logically accessible, such as the debate organised with students of the Peradeniya Law Faculty. In terms of community involvement where educational

⁵¹⁹ UNODC, Roadmap for the Development of Prison-based Rehabilitation Programmes

⁵²⁰ A Novel Approach to Reducing Prison Sentences in Brazil, Alyssa Walker, August 8, 2017

opportunities are concerned, prisons could collaborate with local universities to improve the access of prisoners to higher education opportunities and short-term specialised courses.

Vocational training

As highlighted above, vocational training must be provided in a diverse range of fields to cater to the different facets of the prisoner population, for instance, rural and urban population groups, young and older prisoners, etc. Work opportunities must cater to the needs of short-term and long-term prisoners as well. Equal access of women and prisoners with disabilities to all opportunities should also be ensured.

According to UNODC, a crucial factor that would adversely impact the success of such programmes is the unwillingness of potential employers to hire former convicts; in order to counter this prison authorities should consider holding open days and fairs whereby prisoners are able to showcase the training they have received to potential employers. Such initiatives will also ensure the prisons maintain a relationship with a network of such organisations that would provide assistance to prisoners during their imprisonment and post-release. Initiatives can be taken by the state in this regard to require all public service contracts to pledge to reserve 5% of their vacancies for former convicts. The involvement of trade unions of respective fields should also be considered by prison authorities, so that trade unions may monitor the labour rights of prisoners, which may ensure prisoners are not exploited. Career counselling could form a key aspect of the vocational training programmes where prisoners are provided information about and advised on future employment prospects catered to their particular circumstances, as well as training on self-employment options and access to sources of funding. The success of vocational training programmes could further be ensured if such programmes are tied with competitive apprenticeships and traineeships that prisoners could be awarded upon completing a vocational training course for high levels of performance and progress.

Training in soft skills including, teamwork, effective communication, as well as leadership training, personal development and self-esteem should form a key component of employability training during the sentence.

The high costs of providing qualitative and specialised vocational training could be met if prison enterprises enter the local market and promote the goods and services produced by prisoners, so that vocational training programmes could be self-funded. Prisoners could be incentivised to participate in such opportunities by ensuring they are adequately remunerated and even earn a share of the profits earned by the prison.

9. General observations

The general observation of the Commission with regard to the state of rehabilitation in Sri Lankan prisons is that there are domestic legislation and regulations, which address the substantive rehabilitative measures stipulated in the SMRs. In the absence of legislation or

statutory regulations, Departmental Circulars have addressed the lacuna. The problem hence is non-implementation and the inadequate allocation of funds for the expansion of the programmes which will enable all prisoners to access them and reach their full potential.

A phenomenal shift in societal and state perceptions from one which at present considers prisoners to be undeserving of high-quality treatment and services, to one that views the purpose of incarceration as rehabilitation and social re-integration is required to fulfil the correctional objectives of the DOP. If prisoners are not deemed worthy of all possible opportunities to reform themselves, the current incarceration system functions solely on the premise that adverse prison conditions and treatment deter persons from reoffending. However, criminal justice research suggests that prison does not serve as an effective deterrent, especially when persons commit crimes due to poverty, as many prisoners would likely be released to an environment and circumstances which were conducive to engage in criminal activity in the first place.

Moreover, many officers pointed to the lack of resources and funds and support from the authorities as the main reason for the lack of effectiveness of the current rehabilitation system. The Rehabilitation Officers often do not have any support staff or even an office in some prisons. Further, they are required to perform administrative as well as substantive tasks, such as report preparation, along with the field visits for Home Leave evaluation. This directly impacts the capacity of the rehabilitation services offered to the prisoner. It must also be pointed out that, while Rehabilitation Officers are empowered to organise and introduce new programmes, it is always subject to the approval of the CGP. This results in the policy of rehabilitation being shaped around the views and perceptions on reforming prisoners of the CGP at the time. Thus, the aims and policy of rehabilitation should be systemised so they are not hampered by a change in the management or structure of the DOP.

Currently, support for the families of prisoners and post-release resettlement is primarily provided by members of the community and is subject to donations and voluntary assistance provided. This results in post release support becoming ad-hoc and dependent on volunteering members of prisoner welfare committees, rather than implemented in a systemic manner. Considering the direct impact of family welfare on prisoners' propensity to rehabilitate in prison, and the direct impact of post-release reintegration on recidivism, the government should play a greater role in family welfare and aftercare programmes.

17. Prison Work

"This prison system is 100% a failure. It's not good to let these people stay (in prison) doing nothing. People who are not doing anything always try to do something wrong. They should find a method to make him work because then he learns to do that work. It's not about money, at least he can learn something. If they learn how to do some work, then they might not get involved in unwanted things.

Convicted, PCP

1. Introduction

As highlighted in the chapter Rehabilitation of Prisoners, prison work i.e. being assigned to work in a specific prison party, forms the core of rehabilitation in prison as it is the primary means through which convicted prisoners are kept occupied throughout the day. By being engaged in some form of employment during their sentence, it is envisaged that prisoners would have the opportunity to develop a sense of responsibility and a purpose, while learning a new skill. This not only plays a part in encouraging offenders to reform, but importantly, protects their wellbeing by ensuring daily physical and mental stimulation. By adequately remunerating prison work, the employment can also incentivise prisoners to work hard as their earnings can partly contribute to the financial needs of their families, while they also maintain their savings, which can be accessed upon their release. Allowing prisoners to earn and save money for future use during their sentence would have an impact on the likelihood of prisoners reoffending after their sentence, as they may be financially equipped to transition to a new life upon release.

This chapter will examine if prison work in Sri Lanka fulfils its rehabilitative potential and highlight any shortcomings in the system.

2. The legal framework for prison work

SMR 96 stipulates that sentenced prisoners shall have the opportunity to work and/or to actively participate in their rehabilitation, subject to a determination of physical and mental fitness by a physician or other qualified healthcare professional. SMR 97 states that prison labour must not be of an afflictive nature and further states that prisoners shall not be held in slavery or servitude. SMR 99 states that the interests of the prisoners and of their vocational training must not be subordinated to the purpose of making a financial profit from an industry in the prison. Section 65 of the PO states every prisoner shall perform such labour, whether manual or otherwise, as may be assigned to him.

This section introduces prison work by discussing the categories of prisoners eligible to be engaged in labour during their time in prison, the requirement to be medically fit for work and allocation of prison work. The aim of this chapter is to examine prison work to ascertain whether it does and/or has the potential to contribute to the rehabilitation of prisoners.

The CGP is the senior most officer in the organizational structure where prison work is concerned, and the Commissioner of Prisons Industries and Skills Development (hereinafter referred to as Commissioner ISD) is placed directly below him in the institutional hierarchy. The SP of Industries and Skills Development (Headquarters) reports to the Commissioner ISD. The position of SP was vacant at the time the Commissioner ISD was interviewed, and hence the Commissioner was fulfilling the responsibilities of the vacant position.

2.1. Eligibility to work

Section 65 of the PO states that 'every prisoner shall perform such labour, whether manual or otherwise... provided that unconvicted prisoners or civil prisoners shall not be required to perform any labour in excess of such labour as may be reasonably necessary for keeping in a clean and proper condition the prison or part of the prison in which they are confined'.

The Commission observed that convicted prisoners were engaged in some form of work throughout the day, in every prison at which convicted prisoners were held. All remand prisons also held a small number of convicted prisoners who were required to undertake administrative functions and assist with the daily operations of the prison, in which, according to law, remand prisoners cannot be engaged. In the study sample, 58% of male prisoners serving life sentences said they engage in some kind of a prison work⁵²¹ while only 2% of the condemned prisoners stated the same. Additionally, 71% of the female life prisoner respondents and 39% of the condemned women stated they engage in some prison work.⁵²²

Special and condemned prisoners

Section 650 of the DSO states that 'All prisoners who are classed as 'special cases'⁵²³ shall not ordinarily be employed in any form of prison service'. In every prison, it was observed that inmates categorised as 'special'⁵²⁴ did not engage in prison work and would usually be required to remain inside their wards most of the day

Condemned prisoners are also categorised as 'special prisoners' due to their conviction status and are not required to work as they are held inside their cells for up to twenty-three hours a day. However, the Commission has been informed of a few instances of condemned prisoners reportedly engaged in making and teaching manufacturing handicrafts and this was encouraged by the prison administration as it provides condemned prisoners with therapeutic relief and constitutes a means of passing their time.⁵²⁵ In PCP, one condemned appeal female inmate mentioned that they engage in cleaning dishes after meals, sweeping and mopping etc, while another condemned appeal female in PCP mentioned that they

⁵²¹ Male Life prisoners – 8% prison job, 26% vocational or skills training, 24% party work.

⁵²² Female condemned prisoner – 28% prison job, 11% vocational or skills training.

⁵²³ For a detailed discussion on the separation of prisoner categories, please refer chapter Accommodation.

⁵²⁴ For a detailed discussion on special classes of prisoner, please refer chapter Accommodation.

⁵²⁵ For a detailed discussion on the detention conditions of condemned prisoners, please refer chapter Prisoners on Death Row.

engage in sewing and making ornaments like flowers and earrings from 0830h to 1600h on weekdays.

Prisoners serving life sentences

Prisoners serving life sentences can be allocated prison work and the Commission observed them engaged in labour in most prisons. It should be noted that persons serving life sentences are treated as normal convicted prisoners, although they are serving an indefinite sentence like condemned prisoners.

Life prisoners in ACP mentioned that they can be sent to work parties only if they consent. In PCP, a few life prisoners were disgruntled about being made to work because they considered themselves worse off than other prisoners, i.e. that they are required to work like convicted prisoners, despite serving an indefinite sentence like condemned prisoners. Thus, prisoners serving life sentences are presumably required to work until natural death in prison or until their sentences are commuted to a lesser term, such as twenty years in prison, after which they become eligible to be released on license.⁵²⁶ When the issue of life prisoners being required to work in some prisons was raised with the DOP Commissioner of Operations, he stated that they are engaged in prison work as a form of vocational training so that they may learn an employable skill that will prove useful to them once their sentences are commuted and they are released from prison. However, life prisoners did not see the benefit of being engaged in prison work as their sentence had no definite end date and the process of commutation in place is ad-hoc rather than systemic. As one prisoner, whose sentence was commuted from death to life, stated:

“After the death sentence gets commuted to life, we undergo many difficulties. After staying inside the cell all day for sixteen to seventeen years, it is difficult to get used to the world. If lifers can't go home, there's no point working inside prison, right?”

Life prisoners have the opportunity to participate in rehabilitation by being engaged in prison work, but this is rendered redundant if life prisoners are not allowed to eventually leave prison and utilise the skills they learnt during their sentence. As such, the Commission believes that generally, indefinite sentences are not in accordance with the theory of rehabilitation and would even have the effect, as demonstrated by the narratives above, of discouraging prisoners from participating in prison work. Therefore, for rehabilitation to be effective and the investment in such activities to yield viable returns, a system of periodic evaluation⁵²⁷ with the chance of eventual release should be in place in prisons so that all prisoners are encouraged to work as part of rehabilitation.

⁵²⁶ For a detailed discussion on early release of prisoners on license, please refer chapter Early Release Measures.

⁵²⁷ For a detailed discussion of periodic evaluation of prisoners, please refer chapter Early Release Measures.

Prisoners on appeal

DSO 347 states that Section 341 (4) of the Criminal Procedure Code directs that if an appellant cannot furnish the required bail, he is to be detained in custody without hard labour. Section 297E of the SRs reaffirms this, and adds that an appellant can only be required to:

- (a) to make his own bed;
- (b) to sweep and clean the cell, ward or yard occupied or used by appellants;
- (c) to clean or arrange any furniture or utensils appropriated for the use of appellants; and
- (d) to help, to such extent as the SP may think necessary, in the preparation of food.

There is no express provision which says that prisoners on appeal can opt to work in a party related to their respective trades and professions with the permission of the Superintendent. In almost all prisons visited, prisoners who were on appeal did not engage in any prison work, in accordance with policy. It must be highlighted that persons held on appeal could potentially be imprisoned for over fifteen years⁵²⁸ until their cases are concluded. This would result in persons being held in prison without engaging in any meaningful employment or activity and suffering a loss of income for an indeterminate period of time.

Remandees

SMR 116 stipulates that an untried prisoner shall always be offered the opportunity to work but shall not be required to work and that if he or she chooses to work, he or she shall be paid for it.

This is stipulated in national law by Section 65 of the PO, which states that remandees can only be required to keep their section and belongings clean, and assist in preparing and serving food for prisoners. Section 197 of the SRs supplements this rule while Section 199⁵²⁹ of the SRs allows remandees to follow their respective trades and professions while in prison and receive their earnings.

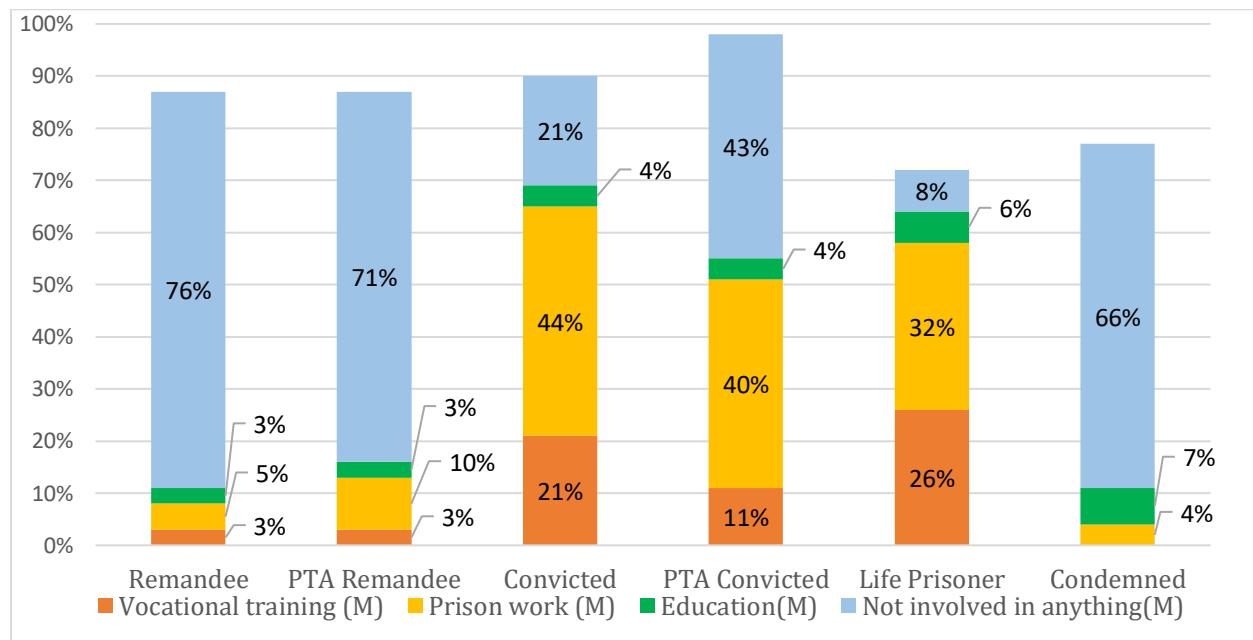
The Commission observed remandees engaged and assisting in the preparation of food in some prisons, namely BATRP, NMRP, MCP and GRP, and engaging in other work when there was a shortage of convicted prisoners. NMRP is one of the few prisons where remandees were said to engage in office work at the SM Branch. Most remand prisoners stated they undertook cleaning of their wards and cells, which was not always done on the orders of the SP but voluntarily by the inhabitants of the ward. Remandee women from NRP, ACP, BATRP and PCP stated the duty to clean the entire female section is rostered amongst all women.

⁵²⁸ For a detailed discussion, please refer to chapter Legal and Judicial Proceedings.

⁵²⁹ SRs 1956, s 199, 'Unconvicted prisoners may be permitted by the Superintendent to work and follow their respective trades and professions and to receive their earnings in the same manner as civil prisoners may be permitted under section 63 of the Prisons Ordinance'

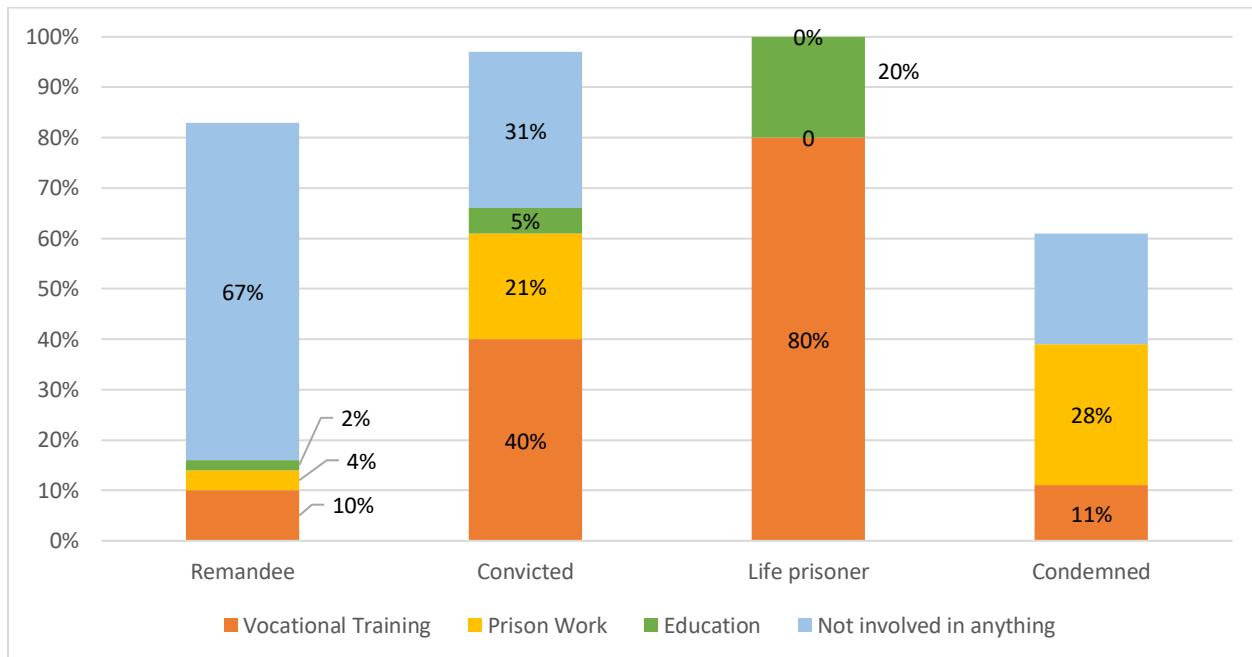
Remandees were often seen to be spending their time engaged in other rehabilitative activities, as discussed in the Rehabilitation of Prisoners chapter, such as sports and vocational training programmes, as they are allowed to remain outdoors for most of the day. Yet, many remandees stated they did not engage in anything productive the entire day. Remandees who have been in prison for several years⁵³⁰, often expressed the desire to work, as a means of passing time and welcomed the possibility of being paid for it. As Section 199 of the SRs gives the remandees the right to work and follow their respective trades and professions with the SP's permission, the lack of such opportunities for remandees in prison, especially considering the prolonged period of time in remand that many prisoners spend, contravenes both the international standard (SMR 116) and a domestic regulation (Section 199 of the SRs). Further, it contributes to the social cost of lost productivity as a result of prolonged pre-trial detention, with many citizens remaining idle all day.

Graph 17.1 Male respondents across prisoner categories describing the kind of activities in which they are involved



⁵³⁰ For a detailed discussion on prolonged periods of remand, please refer chapter Legal and Judicial Proceedings.

Graph 17.2 – Female respondents across prisoner categories describing the kind of activities in which they are involved



As demonstrated by the two graphs depicted above, it is mostly life and convicted prisoners who are engaged in prison work, since they are required to do so as per national legislation. The 21% of male convicted prisoners and 31% of female convicted prisoners who state they are not involved in any activity likely consist of appellants who are not required to engage in prison activities, as stated above.

The majority of remand and condemned prisoners are not able to spend their time in prison productively as they cannot be made to engage in employment by the prison according to domestic legislation.⁵³¹

2.2. Fitness for work

SMR 96(1) states that employability in prison work is subject to a determination of physical and mental fitness, and SMR 30 stipulates that a physician or other qualified health-care professional, shall see, talk with and examine every prisoner as soon as possible following his or her admission to determine their fitness to work.⁵³² This requirement is enshrined in national law through Section 57 of the SRs⁵³³.

⁵³¹ For a detailed discussion on access of prisoners to rehabilitation programmes and activities in prison, please refer to chapter Rehabilitation of Prisoners.

⁵³² For a detailed discussion on medical examination upon admission to prison, please refer chapter Entrance and Exit Procedure.

⁵³³ Section 57 of the SRs states that the MO shall personally examine every prisoner on the day of his arrival in the prison or at latest on the following morning and shall enter in writing, his opinion whether the prisoner is

All MOs mentioned that prisoners are produced before them for a recommendation on fitness to work as part of the admission process. However, the MO who is assigned to both ARP and AOPC, which are situated in close proximity, stated he had observed prisoners with acute heart diseases engaged in labour at AOPC. He informed the Commission that despite his instructions to present prisoners to him for a medical evaluation of fitness to work before they are transferred from ARP to AOPC, this is not always undertaken.

The MO at POPC mentioned that even though all new entrants are examined to identify those who are unfit for work, prisoners declared as unfit are nevertheless admitted into the open prison camp where they are assigned work, instead of being sent back to the prison from which they came, as per his recommendation. This reportedly happens because there is a shortage of prisoners to perform the tasks required for the functioning of POPC. This is reflective of the general situation because, at every work camp/open prison the Commission visited, the severe shortage of prisoners to undertake the required agricultural work was pointed out. As open camps primarily involve agricultural and labour-intensive prison work, instead of examining the prisoner only when he arrives at the work camp, they should also be subjected to a medical evaluation for fitness to work before they are transferred to an open camp, to ascertain whether they are physically fit to work and reside in the camp.

In addition to the initial assessment, Section 64 of the PO states that the MO shall, from time to time, examine labouring prisoners while they are employed. Any prisoner whose health the MO thinks is likely to be affected by a continuance of hard labour shall not again be employed at such labour until the MO certifies that he is fit for it, or can be employed in lighter labour. Likewise, Section 44 of the SRs mandates the MO to daily visit every place where prisoners are at work. However, the Commission did not encounter any doctor who had been visiting prisoners in their place of work during work party inspections undertaken by the Commission. Furthermore, the MO in POPC and KRP specifically mentioned that they do not go on prison rounds.

2.3. Procedure to allocate prison work

SMR 98(3) states that within certain limits prisoners shall be able to choose the type of work they wish to perform.

Section 649 of the DSO states that all prisoners, prior to being placed in any prison service or industrial party, will be passed for such party by the SP. The section further states that no change of parties will take place without the sanction of the SP.

Allocation of prison work or appointing a prisoner to a 'work party' does not happen immediately upon admission, as it depends on the schedule and other responsibilities of the SP of the prison. For instance, the Commission was informed that in WCP it takes about one to two weeks to appoint a prisoner to a work party given the size of the prison and the

fit for hard or light labour. Section 46 of the SRs mandates the MO to maintain a Medical Register or Journal, which shall inter alia contain the names of prisoners who are fit only for light labour.

number of prisoners it receives daily. While awaiting assignment to work parties, prisoners are required to assist in the kitchen.

It was revealed that, in practice, SPs usually ask new prisoners whether they prefer any specific work party or about the prisoner's prior employment experience and try to allocate them to a related work party, as part of the admission process. For instance, the Commission was informed that prisoners who formerly worked in salons being appointed to the salon party in the prison too (ex. WCP salon party). However, there is also evidence to the contrary which suggests possible under or non-utilization of skills of prisoners. For example, a prisoner with nearly five years of experience in the kitchen party in one prison, was appointed to the cultivation party upon his admission to an open prison camp. This does not adhere to Section 654 of the DSO, which states that particularly for tasks such as cooking, attention should be paid to assign those who have proficiency in the task. There was another instance of a prisoner possessing ten years of experience in the office party being appointed to the carpentry party at the new prison. This indicates that the allocation of party work does not depend solely on individual preferences or personal skillset as this is subject to the limitations and requirements of each prison. At many prisons, the prisoner can request to have their work party changed. For example, in WCP, a prisoner mentioned that they can request such a change from the Industrial Foreman, the Officer In-Charge or the SP.

Prisoners revealed to the Commission that appointments to work parties perceived as favourable due to a certain status or recognition they possess within the prison system, for example, the scout party⁵³⁴, is sometimes carried out on a preferential basis. For instance, it was revealed during an interview, that a school friend of the inmate who was a prison officer had used his influence to assign him to the scout party. It was observed by the Commission that, in general, prisoners who are socially influential are appointed to the scout party or the office party, as they are seen as favourable or privileged work places, since they do not involve rigorous labour. It must be highlighted that prisoners allocated to the scout party receive benefits, such as their own supply of water. They have access to separate tanks as a result of being assigned to the scout party, rather than as a reward for good conduct. Such preferential treatment distorts the system of rewards and privileges as they are not based on good conduct, but rather due to their social influence, and therefore do not act as incentives for good behaviour.

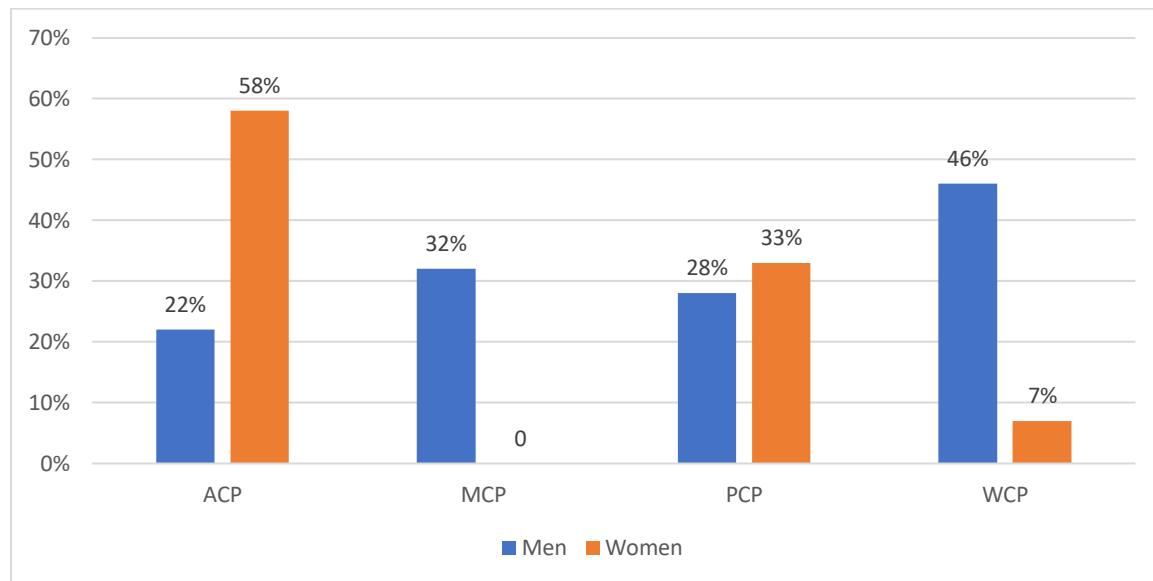
The procedure to allocate prison work is one of the few measures taken by prisons to individualise rehabilitation, by assigning prisoners to a party to which they are suited. If this is not carried out in accordance with stipulated criteria or if this is distorted by allocating work parties through preferential treatment, there will be a mismatch of resources because prisoners may not be assigned to the party for which they have an aptitude. This will improve inefficiency in the prison work system as well as create space for corrupt practices to foster.

⁵³⁴ One scout party inmate introduced themselves as those who engage in various basic tasks such as decorations for functions, putting up stages etc. within the prison system. In WCP, scouts have a Sunday class where they learn how to do tasks they are required to do. One other scout said that they are the ones who go out of the main prison gate to bring something inside and that they help officers to search [wards].

3. Work opportunities in prison

This section discusses the types of work prisoners can be engaged in within the prisons as provided by DOP Circulars and observed by the Commission at different prisons.

Graph 17.3 – Male and female respondents across closed prisons that engage in prison work⁵³⁵

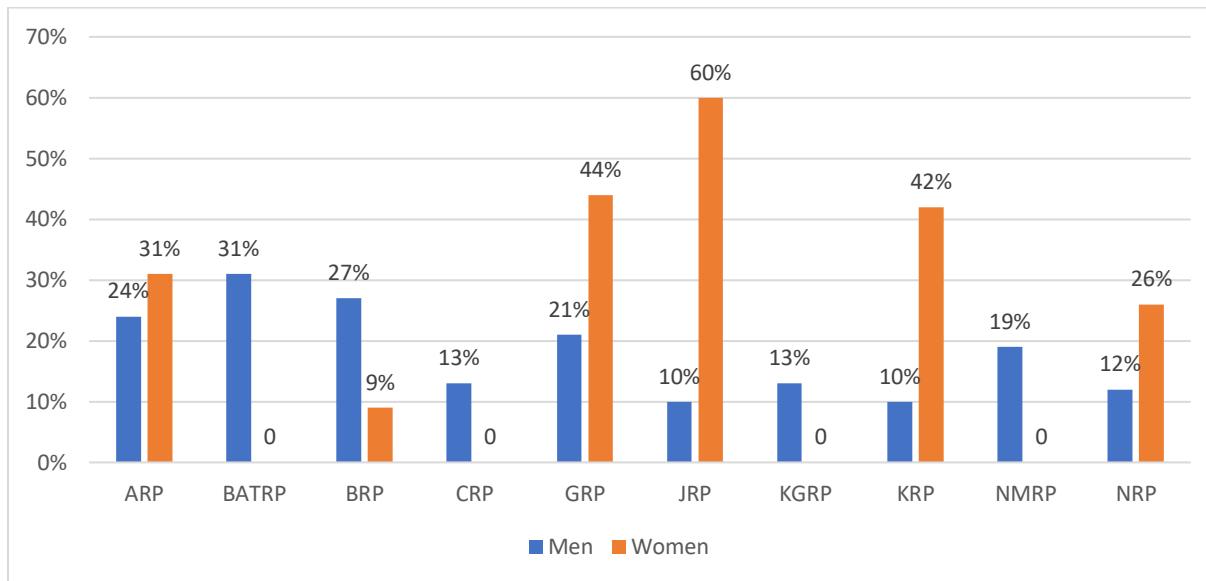


Quantitative statistics from the study illustrate that a relatively higher share of respondents engaged in some kind of prison work at WCP, which holds the largest number of convicted prisoners. As the majority of the convicted women from WCP had been transferred to ACP when the Commission visited the WCP female facility, the remaining few convicted women stated they engage in some kind of prison work.

ACP, MCP and PCP on the other hand have a large remandee population, in addition to the convicted population. Therefore, in the sample, 32% in MCP, 28% in PCP and 22% in ACP stated they engage in prison work. In ACP, where the majority of the respondents were remandees, 58% of the female respondents were engaged in prison work as some remandees were doing cleaning work in the premises. In PCP, all convicted women, including some women on death row participated in weaving/stitching, thus 33% of the respondents stated they engage in prison work.

⁵³⁵ Quantitative data for prison job, vocational/skills training and party work is combined for meaningful analysis, as all three involve prison work

Graph 17.4 – Male and female respondents across remand prisons who engage in prison work^{536,537}



As discussed, although only convicted prisoners are required to work, the Commission has observed that in some remand prisons, remandees, especially those who have remained in prison for a long time, may volunteer to engage in various types of prison work. However, in each remand prison there is a group of convicted prisoners, who engage in essential functions of the prison, such as cooking and cleaning. Where women are concerned, in remand prisons both the convicted and remandee women engage in cleaning the female wards and also participate in vocational training programmes, as the female prisoner population in those prisons is very small, compared to their male counterparts in the same prison. For example, in JRP where 60% of the female respondents stated they engage in some kind of prison work, the prison held only ten female prisoners at the time.

3.1. Industrial work parties

“I did male and female clothes knitting. I can cut/ sew and knit uniforms. I can do aluminium fitting work, make broomsticks and besoms and electrical work. I am really good at them. Carpentry (pause) I did carpentry even when I was outside. I did carpentry here for a long time. I never waste my time here. In order to build my mind, I always engage in some activity.”

Convicted, KRP

⁵³⁶ Quantitative data for prison job, vocational/skills training and party work is combined for meaningful analysis, as all three involve prison work.

⁵³⁷ BATRP, CRP, KGRP, NMRP do not house female inmates.

The most common type of prison work in Sri Lanka is industrial work. According to Section 654 of the DSO, industrial work should be reserved for prisoners with sentences of two years and longer, as a rule.

According to Section 858 of the DSO, prison labour is employed for manufacturing articles and for rendering other services to government departments and private parties. Articles manufactured and services rendered by these parties are divided into two classes, A and B. According to Section 859 of the DSO, class A comprises articles produced in the course of ordinary prison routine and kept in stock, such as coir, brooms, ekel brooms, fibre, coir string, uniform boots and shoes, chamber pots, pints, tatties, door rugs, prison cloth, bed quilts, prison clothing etc. As per Section 860 of the DSO, class B consists of articles made or services rendered for specific orders, such as wooden furniture, rattan furniture, iron and brass articles, lace, leather goods, washing, weaving, tat making etc. Industrial work parties that come under both class A and B have been observed by the Commission, i.e. both these types of goods are usually manufactured by the same party. For example, the coir party would make brooms to be used in prison as well as doormats for an order. Carpentry, blacksmith, welding, tailoring, bakery, weaving, coir products, bricks are a few parties the Commission has commonly observed in prisons.

It must be reiterated that in some prisons, particularly those which mainly house convicted prisoners, the line between prison work and vocational training for certain programmes may become blurred. Prisoners completing vocational training programmes, who receive a certificate at the conclusion of their training, would continue to work in the same work party. For instance, prisoners of the carpentry party who are able to acquire certificates for completing the National Vocational Qualification (hereinafter referred to as NVQ) would then be involved in constructing furniture for the use of prisons.⁵³⁸

DSO 813 states that all tasks for female prisoners will be arranged by the SP through the Jailer who will give orders to the Matron accordingly. In most prisons which house females, female convicted inmates did not engage in industrial work parties. Only in PCP were convicted females said to work at a weaving party outside the female section but within prison premises. This was mentioned by a female convicted in PCP who stated they engage in spinning until 1530h. It was said by a female convicted inmate in ARP that she used to make bedsheets when she was in WCP. However, when the Commission undertook the inspection of WCP, the convicted females had been moved to ACP and hence this could not be verified although a large closed room, which was said to have been used for this purpose, was noticed. In JRP too it was said that females engage in weaving cloth.

3.2. Prison services/domestic service parties

Prison services involve logistical support jobs in the prison that are undertaken daily to ensure the smooth operation of a prison. As per Section 13 of the SRs, the SP may employ such number and such classes of prisoners to maintain the prison and the clothing, bedding,

⁵³⁸ For a detailed discussion on vocational training programmes available in prison, please refer chapter Rehabilitation of Prisoners.

furniture, and utensils used therein in a clean and proper condition, and in preparing and serving the food of prisoners and such other tasks, as may be necessary for the functioning of the prison.

Section 214 of the SRs and Section 653 of the DSO⁵³⁹ state that convicted prisoners sentenced to simple imprisonment shall, as far as possible, be employed on prison services instead of long-term prisoners as it may be a waste of human resources⁵⁴⁰.

Convicted females in all prisons visited engage in sweeping and cleaning the female section premises, cleaning the drains, serving food for the females, cleaning food containers etc, irrespective of the length of their sentence since long-term female prisoners do not have the option to engage in prison work and industrial parties like male prisoners. As discussed in the Rehabilitation of Prisoners chapter, one of the shortcomings of the correctional system as it currently functions is the lack of opportunities for female prisoners to engage in prison work and rehabilitation programmes, except for a few gender stereotyped courses. Female prisoners, especially when their criminal conduct was due to impoverishment, would be ill-equipped to find means of earning an income upon release after being idle for so many years in prison. Under such circumstances, they will be more likely to reoffend when they are released from prison and will find it challenging to escape the cycle of committing crimes due to poverty.

3.3. Office party

Office party prisoners are those who support the functioning of various offices within a prison; RC and SM Branches are the most common offices that employ prisoners. In addition, office party prisoners would support the SP of the institution too. The Commission also found remandees working at the SM Branch in NMRP.

According to DOP Circular No. 37/2014, prisoners with short sentences who are employed in office work at the Prison Headquarters and other prisons should not be involved in

⁵³⁹ DSO 1956, s 653, 'The domestic services of the prisons such as cleaning, conservancy, cooking, dhobying, gardening, sweeping, water carrying, wood chopping, &c., shall, as far as possible and strictly within the numbers sanctioned by the Commissioner in respect of each prison be performed by simple imprisonment prisoners, irrespective of the length of their sentences. Where a sufficient number of simple imprisonment prisoners is not available, rigorous imprisonment prisoners may be employed for such services, the selection being made from such rigorous imprisonment prisoners who are normally located in the prisons under DSO 402 who are known to be well behaved and who are first offenders except in the cases of Mahara, Jaffna and Bogambara prisons where reconvicted offenders may be so employed. In the cases of Badulla, Batticaloa, Galle prisons, if the numbers of rigorous or simple imprisonment prisoners who are retained locally under DSO 402 are insufficient for keeping domestic service parties up to strength, application should from time to time be made to the Head Office. In Kandy, Bogambara prison will supply the domestic service needs of the Remand Prison and in Colombo, Welikada Prison will similarly supply the needs of the Hulftsdorp and Remand Prisons. Save in exceptional cases, the prisons at Colombo, Kandy, Mahara, Jaffna and Anuradhapura are required to fill their local domestic service needs from among the prison populations located therein under the transfer regulations.'

⁵⁴⁰ 1956 DSO, s 54.

documentation work due to the risk of disclosure of confidential information, and if necessary, they can be employed only in cleaning work at the offices. In this instance, it should be mentioned that confidentiality issues can arise even if prisoners with longer sentences are employed in office work, especially if they have unrestricted access to other prisoners' personal files which contain their family contact information and case details. Access to such information can have serious repercussions if the information were to be appropriated and misused. Unrestricted or easy access was observed to be the norm by the Commission, as the Commission too had to obtain the assistance of office party inmates to locate prisoner files in many prisons across the country. However, it must be highlighted that the shortage of staff in most prisons is the reason prisoners have to perform certain roles and functions of prison officers. The Commission also observed prisoners undertaking IT work for the prison administration because prison officers do not possess the requisite proficiency due to the lack of training.

3.4. Special Duty (SD) prisoners

According to Section 292 (c) of the SRs⁵⁴¹ and Section 673 of the DSO, all prisoners who are in possession of four Good Conduct Badges, except reconvicted prisoners, will be eligible for special duty employment as watchers, outpost duties, night duties, patrolling wards, or as attendants to tend to sick prisoners when required to do so by the MO. A Special Duty (hereinafter referred as SD) party inmate once said that the SD badge is something a prisoner receives if they work loyally for the administration and have a good disciplinary record in prison. The Commission has observed that SD prisoners in larger prisons, such as WCP, MCP and PCP, assist RC officers in the management of prisoner files, overseeing work party prisoners, counting of prisoners for unlock and lockup, secretarial duties for higher ranking officers, such as CJ and SP, managing the library as well as assisting in the control of the other prisoners. The Commission has come across watchers and night duty prisoners, specifically at open prison camps, and attendants at prison hospitals in almost all the prisons visited.

The position of SD is considered a reward for maintaining good conduct and a clean record, and is viewed as a strong indicator of rehabilitation in prison. The Commission was informed by the Additional Secretary (Legal) that prisoners who had acquired SD badges during their prison term have higher chances of being allowed to go on Home Leave and being released on license.

3.5. Out parties

Out party is a form of prison work where a group of prisoners would be taken outside the main premises of the prison. Out party prisoners are often employed in cultivation areas

⁵⁴¹ SRs 1956, s 292 (c), 'Prisoners having served one year in Class I shall be entitled to four good conduct badges and pay at the rate of Rs. 1.50 per month, provided that the Superintendent is satisfied with their conduct and industry, an entry to this effect being made by the Superintendent in the prisoners' records. They shall be eligible for employment as hospital orderlies, outposts, night patrols in wards, provided they have not been previously convicted (provided that a conviction under Ordinance No. 31 of 1884* shall not be deemed a previous conviction)' (*Ordinance No.31 of 1884 has been repealed by the Poll Tax Abolition Ordinance, 1932)

outside the prison walls, gardening and cleaning of the path leading to the main prison gate, garbage disposal, maintenance of officer quarters etc. The Commission was also informed that ten to fifteen prisoners can be taken outside the prison for one day to undertake tasks, such as the cleaning of schools or religious institutions, upon the request of these institutions. However, such work is considered to be volunteer work and prisoners will not be remunerated for their services.

DSO 234 provides for a party of prisoners to be detailed to attend to the sweeping and cleaning of the grounds, yards, compounds, drains etc. attached to barracks and quarters, and further mentions that it is to be clearly understood that all such work must be confined to external premises and that on no account are prisoners to be taken inside any barracks or quarters.

In NRP, the Commission observed out party prisoners engaging in garbage collection outside the prison walls without the supervision of an officer, and prisoners in MCP and the Colombo prison complex tending to the plants and flowers outside the prisons, but within the compound. It was observed in MCP that convicted prisoners due to complete their sentence are assigned to outside work parties. This is a commendable practice as it allows them to work unsupervised on the basis of trust, and develop a sense of responsibility during the final stage of the rehabilitation process.

3.6. Open prison camps and work camps

As discussed previously, work camps and open prison camps house convicted prisoners serving short sentences or prisoners with longer sentences who are serving the final part of their sentence. According to Circular No. 22/2016, which regulates the transfer of prisoners, prisoners sentenced for up to four years can be transferred to work camps and long-term prisoners whose remaining term of the sentence is up to five years can be transferred to POPC and AOPC, upon the recommendation of the SP of the prison in which the person is housed and the approval of the Commissioner of Prisons (Operations).

These prisons do not have a perimeter wall and the inmates are detained under minimum security conditions. Open prison camps and work camps are distinct from closed prisons in terms of the work environment, as they place prisoners in an environment that is similar, to some extent, to a normal work environment. In this environment prisoners are trusted to work without excessive monitoring or restrictions, which increases prisoners' sense of responsibility and self-esteem and enables easier and more successful social reintegration.

Open prison camps have a few industrial work parties and are largely focused on cultivation. Prisoners also engage in community work, such as cleaning schools and temples. For example, in AOPC, the Commission observed during the visit that some inmates had gone to clean the Anuradhapura sacred city area for the annual 'Jasmine Flower Offering'.

According to DOP Circular No. 265/1967 prisoners belonging to the following categories are not qualified to be sent to open prison/work camps:

- Persons who have violated rules and regulations of probation, borstal institutions or open prison camps,
- Persons accused of sexual offences,
- Those who are awaiting trial upon temporary visas with a tendency of escaping and those who are under the police supervision,
- Physically and mentally disabled persons,
- Persons accused of disobeying officers,
- Persons convicted for failure to make maintenance payments and income taxes.

3.7. Private ventures in prison

The P. G. Martin Workshop at WCP, (hereinafter referred to as PGM), is a unique form of prison work as it is an instance of an external private party providing an employment opportunity to prisoners within prison premises. The initiative began in December 2016 upon a suggestion by PGM, and PGM supplies raw material and machinery to prisoners who produce leather products, such as bags, pouches and journal covers for PGM in return for remuneration. Initially, inmates from the tailoring party were selected for this venture and were provided a three-month training. At present, workers for the PGM party are selected by the SP in a manner similar to the normal process to assign work parties, and prisoners selected for PGM Party are trained in the craft. Prisoners selected for this initiative continue to be a part of it, without being transferred to another party during their time in prison. No one who is selected is removed from the party. About thirty-five to forty inmates were working at this workshop, during the time of the Commission's visit.

Two prison officers oversee the workshop and two instructors from PGM come every day to train prisoners and quality check products. The usual working hours applicable to other WCP party inmates are applicable; Saturday half a day only and Sunday is a holiday, with occasionally Saturdays being off days too. Public holidays are also off days. There is a basic resting area inside the workshop for sick inmates to sleep. Inmates receive tea with two biscuits at 1000h and again at 1500h. PGM has promised to issue certificates and future employment opportunities for prisoners upon release.

Speaking of the usefulness of such initiatives, the ASP in charge of industries at WCP, Mr. Pallethanna stated, "We need more initiatives like PG Martin where private or state production entities can come into prison and set up workshops. Prisoners and the entity both benefit from it".

A senior officer of the DOP who has previously worked in the Pallansena Correctional Centre for Youthful Offenders, informed the Commission of a similar initiative where ten YOs were employed in the service of an Indian shoe company, where they were required to apply stickers on their shoes (75,000 pieces) in 2013. According to the officer, the YOs had finished the ten-day task in two days, and the CEO of the company was reportedly amazed about the quality of the work. The said YOs had been paid Rs. 800 a day and Rs. 200 more for meals and the wages had been sent to their families. The initiative was halted as the company's own factory workers embarked on a strike in protest against this initiative. This is the only

other instance the Commission was aware of an initiative by a private company, other than the PGM initiative.

While private ventures in prison benefit prisoners by providing them the opportunity to learn a skill and earn an income during their sentence, with the prospect of future employment in the same enterprise post-release, care must be taken to ensure that prisoners are not exploited for profit. Work hours and working conditions must be stringently monitored to ensure they mirror the standards enjoyed by other employees of the company, and prisoners should have adequate access to insurance and the ability to claim indemnity in the case of accidents.

4. Employment outside the prison

SMR 100 states that prisoners who are employed in work not controlled by the prison administration shall always be under the supervision of prison staff. Further, unless the work is for other government departments, the full normal wages for such work shall be paid to the prison administration by the persons to whom the labour is supplied.

Section 13 of the SRs states that no prison labour shall be hired out to, or placed free of charge at the disposal of any local authority or corporation without the sanction of the Minister. Therefore, SMR 100 and Section 13 of the SRs allow prisoners to be placed under the service of non-governmental entities, if they pay the full normal wages to the prison.

4.1. Short-term prisoners

Circular 58/2006 introduces an external employment programme for prisoners who are sentenced to less than a year in prison, to engage them in the service of state and other reputed institutions outside the prison, as it is deemed to be beneficial to both prisoners and the state. The Circular requires officers to be stationed at the work place to supervise the conduct of prisoners, for example, three officers should be assigned to ten working prisoners at the place of employment.

Circular No. 58/2006 states prisoners with professional experience in different jobs can be assigned to these parties and the SP should select suitable prisoners. The basic qualifications are as follows:

- (a) The inmate should be a first-time offender;
- (b) The inmate should not have been sentenced for drug trafficking, rape, robbery or under the PTA;
- (c) The inmate should have been sentenced for one year or less; and
- (d) The inmate should not have other pending cases or police investigations (the SP should select suitable prisoners).

It was said by the officers that, as per Circular 43/2014, prisoners released for such party work can be supervised by retired prison officers, to relieve the burden on the prison

administration of monitoring and supervising these party workers. The Commission was informed that short-term prisoners are not engaged in a structured employment contract, but employed on a temporary basis for specific projects for a stipulated period of time, for ex: to complete the painting of the BMICH.

Such programmes provide a means for the prisoner to develop a sense of responsibility and a work ethic by providing a public service, and also provide them the opportunity to earn an income during their sentence. However, the Commission was informed by officers of WCP that the associated risk of prisoners escaping during their employment is high, because inmates who are on short-term sentences would not have been able to establish a level of trust with the administration, unlike prisoners selected for the Work Release scheme (discussed below). Also, due to the fact that the prison officer under whose watch the inmate managed to escape will be suspended, and a large number of officers are required to supervise the inmate, the programme is rife with logistical and practical limitations. For these reasons, this programme is not extensively utilised in WCP.

4.2. Work release scheme

The 'Work Release' scheme, introduced by Circular No. 634/1974, is a programme that enables prisoners to leave the prison premises to work outside as ordinary paid workers, employed by private or public entities. Circular No. 24/2013 states that it is the duty of the Welfare Officers to employ suitable prisoners on work release scheme at external State institutions.

The objective of this scheme is to provide an opportunity for long-term prisoners to engage in employment and earn an income to counter the most common post-release challenges that prisoners face, namely the lack of income and employment opportunities, as well as become accustomed to a typical work environment. This scheme is intended to assist the prisoner to continue in the same employment after release. The said Circular requests prison officers to inquire about industries, industry owners and estates who could provide suitable work opportunities for prisoners. Contrary to the short-term work scheme outlined above, prisoners sent on the Work Release scheme are not heavily supervised by prison officers and experience a normal work environment. Retired prison officers are often recruited to supervise prisoners engaged in such forms of employment. This allows a prisoner to work without constant supervision, thus maintaining a sense of responsibility and trust when they are due to be released from prison. Pointing to the manner in which the Work Release scheme enables social reintegration, Commissioner of Prisons – Rehabilitation stated:

“Work Release is one method of social reintegration. The prisoners can wear civil clothes and work in government offices and these prisoners are under the supervision of a retired prison officer.”

According to the Circular, only the prison authorities and employer shall be privy to the conviction status of the prisoner and he shall change from his prison uniform to any other civil attire at the prison gate at the start of the day. The Circular states the prisoner shall receive a salary as an ordinary employee, which he can access at the end of his sentence or

send for the use of his family members during the imprisonment. Wages to which prisoners employed by Work Release schemes are entitled will be discussed further in the remuneration section of this chapter.

According to Circular No. 22/2013, those who are convicted under the PTA and those who are convicted for offences that are ‘controversial or sensational’⁵⁴² cannot be employed outside of the prison. It should be noted that the terms ‘controversial or sensational’ are not defined, nor is there a procedure set out to determine which offences fall within these categories. Prisoners who are not within those categories can be recommended to work in institutions outside the prison if they have completed 1/3 of their sentence, and/or do not have any pending cases or police investigations.

Prior to assigning a prisoner to work, the approval of the DOP Headquarters should be obtained by the respective prison by sending a complete report with details including information about the conduct, Home Leave, release date etc of the prisoner along with the SP’s recommendation. One of the conditions to be assigned to this work party is that their home town should not be close to the place where they will be working, and the officer in charge of the relevant work party should certify that they have been of good conduct within the institution. The Commission did receive allegations that the selection of prisoners for the Work Release scheme is conducted on the basis of favouritism, rather than by using objective criteria. A prisoner from MCP described it as follows:

Q: “Who decides who is sent out?

A: There are some officers who decide that. If you are known to an officer, then they might give you the chance to work outside but I don’t know anyone.

Q: Does it happen because of a connection with the officer?

A: Yes, it happens because of connections”.

Hence, there is a need to ensure that the work release scheme follows a fair and transparent process with adequate oversight, to ensure that the opportunity to work outside the prison is not awarded on a preferential basis or subject to corrupt practices.

Table 17.1 - Number of prisoners engaged in Work Release Scheme in the years 2017 and 2018⁵⁴³

Year	No. of Prisoners Engaged on Work Release	No. of Prisoners Found Unsuitable	Total Amount Earned for the Year (Rs.)
2017	675	-	5,106,200

⁵⁴² This is a translation of the Sinhala circular.

⁵⁴³ Department of Prisons, Prisons Statistics of Sri Lanka (Vol. 38, 2019), p 68.

2018	547		4,526,040
------	-----	--	-----------

Institutions at which prisoners from the Colombo prisons have worked include the construction of Makumbura railway under the Railway Department, the Government Printing Press, RMB, BMICH and the Planetarium. Local government bodies provide work opportunities for prisoners at MCP and BRP.

The Commission has not observed or heard of any private entity that provides employment for prisoners as part of the Work Release scheme, even though it is possible under the aforementioned Circular No. 634/1974. The Circular stipulates that it is to be implemented with the support of persons in the community, members of the prisoner welfare committees and owners of businesses including factories and plantations.

In PCP, the Commission encountered a group of traditional Kandyan dancers who perform at external events. As per Circular No. 11/2010, Kandyan dancing teams are in operation in WCP, PCP and MCP and a Low Country dancing team in Dalupotha Correction Centre for YOs - the Circular recommends that such resident dancing teams be formed in other prisons as well. The Circular states the dancing teams should not be assigned to perform on private properties, and requests should be accepted only for events at public places via written applications. The Commission however, did not notice any other forms of traditional dancing teams, such as Bharathanatyam.

5. Shortcomings of prison work

This section will examine the elements that hinder prison work having a substantive impact on the rehabilitation of prisoners.

5.1. Inadequate equipment and training

SMR 78 mandates that as far as possible, prison staff shall include a sufficient number of trade instructors among others, and further states that the services of trade instructors shall be secured on a permanent basis, without thereby excluding part-time or voluntary workers.

Section 126 of the SRs states that one or more officers shall from time to time be employed to instruct prisoners in any particular handicraft, as well as for general duty. Section 294 of the SRs states that the SP can appoint any specially qualified prisoner, an Instructor Grade I (IG) in a trade party, subject to the approval of the CGP. Section 662 of the DSO states they will be required to teach other prisoners the work done in their respective parties, in addition to working in the parties themselves. The Commission during the study has come across IGs within the system. One inmate in WCP mentioned, "To be IG-1, one should be able to teach others but most of the people received IG-1 because of the foreman, who recommends the person is in favour of him."

The Commission also noted instances of prisoners instructing other prisoners, some of whom were IGs, while others were senior prisoners and therefore possessed more experience. There were some persons who had followed a vocational training course in the relevant field at the same prison or at a previous prison. For example, the AOPC bakery 'bass' had followed a bakery course by National Apprentice and Industrial Training Authority (hereinafter referred to as NAITA) when he was in WCP; the PCP welding party 'bass' had followed a welding course in PCP.

Commissioner ISD mentioned that the DOP needs to recruit more skilled instructors for which they require more funds as the number of vocational training and agricultural instructors is inadequate. In some work parties the Commission observed that there are prison officers appointed as instructors (ex. WCP carpentry party, MCP tailoring party) while in others, a visiting external instructor functions on a part time basis (ex. POPC welding). ASP in charge of industries at WCP, Mr. Pallethanna mentioned:

“...if we can hire more vocational instructors in more specialized areas it will be good. We need to diversify what we do. Like motor mechanic, AC repair, TV repair, computer repair etc. This is what is most useful in today's market. [...] Prison work has to be beneficial for the person that does it.”

He further stated, “We don't have enough machines. Lots of people just idle because there aren't enough machines to keep them occupied. Not enough machines and not enough orders even for the machines we have”. Due to the inadequacy of raw material and equipment the MCP and ARP weaving parties had no threads for three months and two years respectively – instead they were making brooms and ekel brooms and crafts from coconut shells. This has contributed to work of useful nature not being assigned to prisoners, and in the worst cases unproductive work being assigned to prisoners to merely keep them occupied, thereby contributing to the ineffectiveness of prison work as a means of rehabilitation. This is best illustrated by the then CGP who stated:

“Only forty prisoners can work in one workshop at one time but there is an excess of prisoners appointed to party work at Welikada. If there are eight workshops it means altogether 320 prisoners are required but we have around 1500 working there. Hence, many people have to stay idle and a group has to wait until others finish work. Anyhow in Agunukolapelassa we only take forty prisoners if there is space only for forty.”

WCP SP illustrated the need to modernize prison work thus:

“We are still running the benches and machines from the British era. We are still doing things they introduced hundreds of years ago. We need to have modern industries, skills that prisoners can use when they go out. Not useless, time consuming things. There aren't any new machines. There aren't enough instructors. These instructors who come here, they learn from the prisoners who have acquired the skill over the years. They [the instructors] just stand

by while the prisoners teach the others. We need new technology. I'd say there is only about 30% of success in what we are doing here."

5.2. Unsuitable working conditions

If the conditions of prison work are not conducive to maximising the potential of prisoners in a manner that is reflective of employment outside the prison, the objective of ensuring that prisoners integrate into a new employment opportunity and work environment after release may not be fully achieved. Furthermore, unsuitable working conditions may not only affect the health and wellbeing of inmates, but also make them disinclined towards active and full participation in prison work.

Conditions of work spaces

SMR 14 states that in all places where prisoners are required to work, prisoners are required to have adequate access to natural light, fresh air and ventilation, as well as artificial light to be used at night time.

In almost all prisons visited, except ACP and PCP, the work places did not meet adequate lighting and ventilation standards and often were huts or sheds with midway meshed walls and tin roofing sheets (ex. KOPC blacksmith party), or were very old or barely maintained dilapidated buildings. For example, the WCP tailoring party roofing tiles had been made in 1885 and the inmates claimed that they often fell off the roof and onto the ground, while the WCP carpentry party did not have adequate natural light or ventilation.

Safety

SMR 101 states that precautions in place to protect the safety and health of free workers shall be equally observed in prisons, and provision shall similarly be made to indemnify prisoners against industrial injury.

During inspections the Commission noticed multiple hazards in work areas. For example, in the WCP kitchen, an inmate was observed tipping over the large pot of the steam cooker that contained boiling water by himself, while being in close proximity of the cascading boiling water, thereby risking being burnt. In HWC, it was observed that a rickety wooden plank was kept on an iron scaffolding and an inmate was standing on the plank to reach and paint the ceiling. In one prison, a brick party inmate said that they carry a weight of minimum 70 kg to 80 kg of sand for more than 100 m, from the source of sand to the brick making area during a single trip and they make multiple trips back and forth, throughout the day: He stated:

"Each bag weighs 70 kg upwards and we have to carry it far. When we come back, our hips are aching. To carry one bag on our shoulders, we must bend and walk. If the bag falls, they will beat us for that as well. So, we must carry it carefully even if our hips cannot take it."

The use of safety equipment was observed to be at minimum or non-existent in most work parties. One reason for this was the non-availability of safety equipment. For example, in WCP soap party, the inmates had not been provided safety goggles (gloves were seen in the room), even though they work closely with caustic soda, i.e. sodium hydroxide, which can cause severe burns and permanent tissue damage as it can cause hydrolysis of proteins.⁵⁴⁴ The Commission was informed that a party inmate had once suffered such an accident. It was also noticed by the Commission that the room where soap was made was extremely small and contained no open windows or vents. Adequate masks were not observed being used in parties, which contained a high concentration of dust, such as WCP brush party and WCP carpentry party.

Although the carpentry party section in WCP contained a large amount of dust which caused officers of the Commission to suffer throat irritation during inspections, only a few workers were observed wearing masks; they said they had requested masks, which had not been provided. No safety goggles were observed in the WCP carpentry area either. In one brick party, the inmates mentioned that gloves (and boots) are needed for them as their bare hands get burned from the heat of the hot bricks. They said, "We have to do everything with our bare hands and our hands get burned. I had wounds on my hands. They healed only recently. Our work is with the fire. If we say we can't do it, they will beat us".

In prisons where safety equipment was available, it was observed by the Commission that the prisoners were not seen to be using them. For example, in AOPC, the carpentry party had been provided safety glasses and nose masks but they were not being used. The AOPC compost party inmates were wearing gloves but no boots. The inmates claimed that the boots given are impractical as they are slippery; instead they were wearing canvas shoes which did not provide full protection from possible contaminations and/or cuts and other injuries. The KOPC compost party inmates had been given boots, gloves and masks and soap and Dettol by the local government authority, but they were stored away in a room and only a few inmates were wearing boots/gloves, and most of them were not wearing masks.

The reason for prisoners not being inclined to use safety equipment could be a lack of awareness amongst prisoners of the risks to their health and potential accidents that could occur. During inspections, the Commission did not observe safety instruction notices in every prison. The fact that prisoners were allowed to work without using available safety equipment indicates that officers did not mandate such protective gear to be worn.

In addition to the above safety concerns, most work party inmates mentioned that there was no proper equipment for them to perform their functions, which might result in accidents or over exertion. For example, JRP out party inmates who engage in gardening needed more equipment, ACP carpentry party needed more metal smoothing planes, chisels, saws, hand drills etc., and HWC carpentry party needed proper electric sockets/extensions.

⁵⁴⁴ If splashed in the eye it can cause burns in the eyes which may lead to permanent eye damage, -Agency for Toxic Substances & Disease Registry, 'Toxic Substances Portal – Sodium Hydroxide' (21 October 2014) <www.atsdr.cdc.gov/mmg/mmg.asp?id=246&tid=45> accessed on 20 November 2018

If an accident occurs at the work party, it seems necessary steps are taken immediately. One WCP party inmate mentioned that when accidents happen, they take the person to the surgery/dispensary inside the prison immediately. A soap party inmate too mentioned that he was immediately taken to the dispensary when he had an accident during work. From the dispensary they are taken by the Industrial Foreman to the PH. The Commission was informed of one death that took place in WWC due to faulty equipment and machinery⁵⁴⁵.

Working hours and holidays

SMR 102(2) allows one rest day a week for prisoners and Section 217 (1) of the SRs affirms Sunday is to be free of work. Section 219 (1) of the SRs states that no prisoner liable to labour shall be compelled or allowed to work on Sunday, Good Friday, Christmas Day, Vesak Day, Hindu New Year's Day (these are considered as prison non-working days under Section 169 of the SRs), and on Saturday after 1100h, and, where the prisoner is a Muslim, on Hadji Festival Day. On holidays, prisoners can only be assigned work considered by the SP as necessary for the domestic services of the prison, and the cleanliness and sanitation of the prison premises and the attached quarters, or in cases of special emergency all convicted prisoners shall be required to work on the written order of the CGP or SP. Section 651 of the DSO⁵⁴⁶ reiterates this.

In WCP, inmates mentioned that they work six days a week, with Saturday being half day and Sundays, public holidays and Poya days observed as holidays. However, WCP carpentry party inmates mentioned that they work on holidays if there is an urgent order. An inmate from the AOPC carpentry party said the same, mentioning that he had worked even at night to finish an urgent order, but that he did it happily. One WCP inmate mentioned that they are sent to work at the Pingo section even on rainy days as the officers do not want to keep them in wards since they would be required to employ more officers to supervise wards and there are not enough officers.

Inmates in all open prison camps visited (HWC, POPC, KOPC, WWC, AOPC) stated that they work all seven days. However, in KOPC, inmates mentioned that if they observe *sil*⁵⁴⁷ on Poya days they are excused from work. In HWC, one inmate mentioned, "Even if there is a major holiday, we don't get any freedom. We don't get rest for Sinhala and Tamil New Year, Hindu festivals or Muslim festival. Every other prison gives a holiday if there is a special holiday. We don't get that in this prison". In AOPC, prisoners claimed that they worked on Vesak Poya day in 2018. In POPC, one prisoner alleged that for the past three months he had not been given a single holiday. Prisoners in open camps have suggested that they should be given Sundays and government holidays off to rest and recuperate. Circular 58/2006 allows short-

⁵⁴⁵ For a detailed discussion, please refer chapter Death in Prison.

⁵⁴⁶ DSO 1956, s 651, 'No prisoners shall be compelled or allowed to work on Sundays, prison non-working days and Saturdays after cease labour except on prison services, which shall be confined to what is strictly necessary for the order of the prison, and except in cases of special emergency on the written order of the Superintendent, when all convicted prisoners shall be required to work as directed. Prisoners who are Muslims are not required to work on Hadji Festival Day.'

⁵⁴⁷ Some Buddhists observe Eight Precepts on poya days.

term prisoners who engage in outside work to be employed during the weekend and on public holidays.⁵⁴⁸

Prisoners in work and open camps island-wide have mentioned to the Commission that they are required to engage in tasks during weekends, such as clearing the ever-growing vegetation around the camp, as the officers wish to keep them occupied, rather than allow them free time. Adequate time to rest, recuperate and engage in leisurely work and hobbies would contribute towards prisoners' level of productivity and maintenance of their physical and mental health.

SMR 102(1) states that the maximum daily and weekly working hours of the prisoners shall be fixed by law or by administrative regulation, considering local rules or custom regarding the employment of free workers. SMR 102(2) states that working hours shall leave sufficient time for education and other activities required as part of the treatment and rehabilitation of prisoners. Section 218 of the SRs states that in no circumstances shall the aggregate amount of labour required to be performed by any convicted prisoner be less than forty-seven hours per week. The maximum number of working hours per week is not stipulated.

DSO 847 further mentions the fact that if prisoners have to temporarily cease work in order to have their hair cut or to go to the lavatory, etc. it does not in any way relieve them of their obligations to complete their set minimum task assessment and that no credit for authorised absence beyond half an hour should, as a rule, be given in respect of absences, unless they are unavoidable. The WCP kitchen party night shift inmates stated that they have no time to obtain medicine or go to the library and that they are locked inside the ward the whole time they are not engaged in the preparation of food in the kitchen. However, one WCP bakery party inmate said that if there is an urgent medical requirement they can go to the dispensary and obtain medicine with the approval of the officer in charge of the bakery. It must be ensured that prisoners who are locked during the day after working night shifts in the kitchen and bakery parties are allowed adequate opportunity to access medical treatment during the day.

One common concern of the inmates working at the Pingo section in WCP was the loss of a half an hour from their free time: it was said that earlier they used to cease labour at 1130h (to get lunch) and 1530h (for the day) but now it is 1145h and 1545h and this increase of working time by half an hour poses a lot of difficulties for them as they used to complete a lot of personal work, such as getting medicine and washing clothes during that half an hour. Inmates at the WCP weaving party mentioned that when lunch is served later than usual, they do not get the opportunity to have lunch as they have to be back at work by a certain time. A party inmate in WCP said during an interview, "Party people can go to the dispensary only during their [lunch] free time. That means people have to decide whether their hunger is bigger, or their illness is bigger". The Commission observed working prisoners lined up at the dispensary during lunch time to seek medical treatment, but since there is only one dispenser for hundreds of prisoners, this process takes a long time. If the number of doctors

⁵⁴⁸ Department of Prison, Circular No. 58/2006.

available for prisoners to consult was increased, more prisoners would be able to seek medical attention within the given frame of time.

Sick leave

Prisoners in almost all prisons visited stated that they were required to work even when they were suffering illnesses. For instance, in the 'Pingo' section (industrial work party section) at WCP, a severely ill inmate who was lying on the floor after coming to work in the morning was observed. Some inmates mentioned that they are required to work even when they are ill, while some have mentioned that they are excused from work for illnesses. For example, in MCP the following exchange took place between an interviewer and a prisoner:

A: "Even if we fall ill or have a stomach-ache we aren't allowed to just stay away from work on such days.

Q: Don't they excuse you?

A: No. They ask us to get a medical [report], but the officers have told the doctors not to grant medicals; if I say I have an illness and request a medical for two days the doctors say they can't issue since the officers have instructed them not to.

Q: Is this what the doctor says?

A: Yes

Q: If you have flu or is suffering from a viral disease?

A: Then they keep us in the PH.

Q: If it's a non-communicable disease or a severe pain, you have to go?

A: Yes, I have to go."

When asked whether he has ever informed prison officers that it was difficult for him to work due to being ill, an inmate in PCP mentioned, "There's no point telling them. I just take Panadol because telling them is useless". Similarly, an inmate suffering from epilepsy in another prison mentioned, "Even if it is difficult, it is not like I can avoid the work. Even if it is hard, I must do it. We must do the portion of work allocated to us. I can tell the officers, even if I tell they would say, 'do your work'". In BATRP, an inmate mentioned, "If we refuse work because of sickness they will hit us. They don't care if we have a headache or chest pain, we have to do the work". In contrast, in KOPC, an inmate mentioned, "If you have informed the officers that you're really unwell, then they permit you to stay in the ward the whole day". Similarly, in HWC, during inspection of wards the Commission came across a few prisoners in the wards who were reportedly allowed to take the day off work due to illnesses, while other prisoners were at their respective work party sections.

In WCP, it was said that the doctor is available at the separate dispensary inside the Pingo section at random times, five days a week. An inmate said that he has never taken medicine from the doctor who comes to the Pingo section because reportedly, by the time the name of the prisoner is called out, the medicine has already been prescribed without checking his symptoms. He further stated that the doctor inquires about the offence before inquiring about the symptoms, and that prisoners have been discriminated for committing certain offences. It should be noted that many prisoners in different prisons have mentioned to the Commission that when they access medical care, doctors question them about the offence for which they have been sentenced or remanded.⁵⁴⁹

5.3. Ineffective calculation of productivity and output

Circular No. 64/1982 introduced a mechanism whereby the wages earned by prisoners would be proportionate to the marks they have earned, as depicted in Table 17.2. This was intended as an incentive for exemplary conduct and hard work. The circular states that this marking system is applicable for the prisoners employed in agriculture and industry only, as their productivity is quantifiable based on output unlike other work parties, such as kitchen, office, etc, where prisoners are engaged in the provision of services rather than producing goods.

Section 845 of DSO states Industrial Supervisors should ensure that each prisoner is 'fully and efficiently employed and performs a reasonable or prescribed amount of work each day and that a satisfactory rate of production is maintained'. Similarly, Section 847 of DSO mentions that if the minimum output for each prisoner, as prescribed at the beginning of each day, is not completed at the end of the day, the defaulters should be credited with six marks only for that day.

According to DOP Circular No. 64/1982, all prisoners who are engaged in prison work are categorised into four grades. Getting promoted from one level to another requires both high marks and high attendance, as mentioned in the 'Requirements' column of the said Table.

Although attendance is compulsory, in WCP for example, there were many prisoners who did not engage in any work but sat near the work party in Pingo section throughout the day, as the space and machinery⁵⁵⁰ was not enough for all the prisoners in the section. This is because they are not allowed to remain in the ward during the day, due to the lack of prison officers to supervise both places. When inquired about marking attendance, prison officers mentioned that those who are not engaged in any work due to the inadequacy of materials and equipment are also marked 'present'.

⁵⁴⁹ For a detailed discussion on complaints against prison doctors, please refer chapter Access to Medical Treatment.

⁵⁵⁰ As observed on HRCSL inspection days, even though WCP brush party employs about one hundred inmates but only thirty-thirty-five prisoners can work at a time. Similarly, WCP tailoring party employs about 140-145 people, but according to the officers only sixty of them work but the Commission could observe even less. This pattern was observed in many other prisons too, even though at a comparatively smaller scale when compared with WCP. For example, in ACP, only five out of the tailoring party of thirteen inmates could work, as there were only four machines.

Table 17.2 - System of daily remuneration based on marks earned by prisoners per day

Marks	Grade I Prisoner	Grade II Prisoner	Grade III Prisoner	Grade IV Prisoner
	Cnts/Rs	Cnts/Rs	Cnts/Rs	Cnts/Rs
0 – 25	.10	-	-	-
25 – 35	.20	.07	-	-
36 – 45	.30	.35	.35	.35
46 – 55	.40	.75	.75	.75
56 – 65	.60	1.10	1.10	1.30
66 – 74	.80	Unclear	1.50	1.50
75 – 80	1.00	1.50	2.00	2.50
81 – 90	1.20	1.65	1.50	2.65
91 – 95	1.30	1.80	2.00	2.80
96 – 100	1.50	2.00	2.50	3.00

The maximum possible wage per day is earned if a prisoner is awarded a minimum of eighty marks. If the person has less marks their wage is proportional to the marks, as mentioned in the above table. The Circular further states that the eighty marks that have to be acquired to be eligible to be paid the maximum wage are dependent not only on an inmate's productivity, but also his conduct and the way in which he engages in work.⁵⁵¹ The Circular emphasises that this marking system is not centred on the prisoner's skill, but is centred on moulding his character.⁵⁵²

Where the process by which marks are quantified into targets for each work section is concerned, the Commission was informed that the targets are set for prisoners by the respective instructor, based on the Grade of the prisoner. The amount of work done by a prisoner in a day is recorded in a register in the industrial section. Officers supervising the work party are required to monitor the conduct of prisoners during work hours, and marks would be deducted for disruptive conduct.

It has been noted that even though domestic regulations have focused on rehabilitating prisoners through work by building character and perseverance, they have little impact in practice, as both attendance and marks systems appear to be ineffective. The attendance system is rendered ineffective as those who do not engage in work too are marked 'present',

⁵⁵¹ Department of Prisons, Circular No 64/1982, fifteen marks out of eighty marks will be given for good conduct and forty for the production and twenty-five for the way in which he engages in work. However, a different marking system was said to the Commission by an officer at the WCP weaving party; it was said that the prisoners are entered to the marking system after six months and eighty marks per day will be given in total, as fifteen for attendance, twenty five for conduct, forty for working. It was said that if a prisoner is absent in the evening, zero marks will be given, even though he was there in the morning.

⁵⁵² ibid It goes on to clarify that if a prisoner's or a YO's general conduct in the industrial section and his relationship with the officers' and his co-workers is good, fifteen marks - the maximum amount of marks given to that can be given. Forty marks given for production is given not according to the amount he produces as stipulated for his Grade, but by considering whether the production is done according to the instructions given, in an economic manner and the quality of work which does not necessitate re-work and whether the Department acquired a loss.

and the wages paid for prisoners are so low. For instance, even a prisoner who earns ninety-six to hundred marks, which is the maximum number of marks, only earns a maximum of Rs. 3.00 per day. Therefore, the proportioning of wages according to marks as stipulated in the Table would have little impact on the rehabilitation of prisoners as there is virtually no incentive to increase their productivity.

5.4. Inadequate remuneration

SMR 103(1) states that there shall be a system of equitable remuneration for the work of prisoners. Remuneration applicable to each type of prison work highlighted above is discussed in this section. DOP Circular No. 64/1982 titled ‘Wages Scheme for the Industrial, Agricultural and Domestic Services in Prisons, Borstal and OPCs’ is the main regulation stipulating remuneration for work sections in the prison.⁵⁵³

At the onset, it must be stated that international standards stipulate prisoners cannot be exploited for labour during their sentence. Furthermore, as discussed previously, their inability to contribute to the household expenditure of their families as they are in prison is an oft-cited source of anguish. The lack of finances and the loss of income during the sentence is also a reason many released prisoners may be inclined to reoffend. Thus, by adequately remunerating prisoners for their labour, prisoners can be incentivised to work hard and meet their daily output targets, while maintaining good conduct and behaviour.

The Commission observed however, that the system of wages in prisons in Sri Lanka does not fulfil these objectives. The typical daily wages of different employment programmes in prison are outlined below.

Daily Wages

- Industrial Work Parties⁵⁵⁴ [Annex 17.1]:

Grade 1: Rs. 1

Grade 2: Rs. 1.50

Grade 3: Rs. 2

Grade 4: Rs. 2.50

⁵⁵³ According to the said Circular, working prisoners are categorised into four Grades and the daily wage to which they are entitled depends on the Grade to which they are assigned. In WCP, it was observed by the Commission that a Prisoner Marking Book and a Salary Book are maintained by the individual party leaders, which they submit to the Industrial Office to be used for the calculation of wages. Prisoner do not receive any wages for the first six months as they are on probation.

⁵⁵⁴ Section 295 (a) of the SRs states that all money earned by prisoner is subject to deductions for tools, material, equipment, clothing, bedding etc. lost through negligence or wilfully damaged by prisoners, and deductions will be made only on the order of the SP. DOP Circular No. 64/1982 states that five cents out of the daily wage of every prisoner and YO in probationary schools must be deposited in the Common Fund.

- Remuneration at open prison camps/work camps⁵⁵⁵ [Annex 17.2.]

Grade 1: Rs. 1

Grade 2: Rs. 1.50

Grade 3: Rs. 2

Grade 4: Rs. 2.50

- Remuneration at the P. G. Martin workshop

SMR 100 states that, where prisoners are employed in work that is not controlled by the prison administration, unless the work is for other departments of the government, the full normal wages for such work shall be paid to the prison administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners.

The payment for prisoners working at the PGM workshop is Rs. 500. The Commission was informed that PGM pays the additional administrative costs directly to the prison so that it does not have to be deducted from their salaries. Bank accounts are opened for prisoners by PGM at NSB in which their salaries are supposed to be deposited.

- Work Release Scheme

Circular No. 21/2016, titled 'Employing Long-Term Prisoners on the Work Release System and Short-Term Prisoners in Outside Service' states that both long-term prisoners serving on the work release system and short-term prisoners employed in out party service are to receive the following daily payment⁵⁵⁶:

Daily wage	Rs. 500.00
Deduction for lunch and tea	<u>Rs. 100.00</u>
Balance amount	Rs. 400.00
Deduction for the Government Consolidated Fund 10%	Rs. 40.00
Deduction for the Prisoners Welfare Fund 10%	<u>Rs. 40.00</u>
Accordingly, the amount to be paid to a prisoner 80%	<u>Rs. 320.00</u>

As per Circular No. 11/2010, the remuneration system for resident dancers who perform at functions is as follows (since 1 March 2010):

	Welcome/Wedding etc.	Perahara/Pirith (night functions)	Cultural ceremonies longer than an hour
For the team at PCP	Rs. 500	Rs.700	Rs. 1000.00

⁵⁵⁵ According to Circular No. 64/1982, the Grade the prisoner was in at the time of the transfer to the OPC/WC or the wage he received in the previous prison would not be effective upon transfer to an OPC, meaning a prisoner who was in Grade IV, earning Rs. 2.50 a day, will be paid only Rs. 1.00, because when he is transferred to an OPC/WC and begins at Grade I anew, despite the years of experience he would have gained in a different prison.

⁵⁵⁶ Circular No. 58/2006 states that a detailed report on the payments for the prisoners and officers who are entitled to this payment should be sent to the Commissioner of Prisons (Welfare) monthly.

Others	Rs. 600	Rs. 800	Rs. 1000.00
--------	---------	---------	-------------

The money received for the supply of dancing teams should be divided and assigned as follows and entered in the following accounts⁵⁵⁷:

- For the Prisoners Welfare Fund - 40%
- For the Government Consolidated Fund - 10%
- For the dancing instructor - 25%
- For the prisoner⁵⁵⁸ - 25%

The rehabilitative element of prison work is rendered ineffective due to the meagre remuneration prisoners receive, and thus prisoners are not inclined to work hard or well at their respective work parties. Many prisoners stated they engaged in prison work only because it is mandatory. Some prisoners were also under the impression that they were required to work for insignificant wages as a form of punishment due to their conviction. By paying prisoners a nominal amount, the DOP is in contravention of international standards that prohibit the exploitation of prison labour and require prisoners to be paid the market wage for their work. When their hard work is valued so little it will contribute little to increasing prisoners' self-respect as part of the rehabilitation process

Prisoners who receive standard wage rates under the Work Release scheme or PGM party would fare better than other prisoners engaged in prison labour. They are able to earn a decent income in prison, a portion of which can be transferred to their families every month, and the remainder can act as a security for them upon release.

Commissioner ISD also mentioned that the government should allocate more funds to the DOP budget to enable the payments of prisoners to be increased. It should be noted that Circular No. 16/2017 mandates 40% of the profit generated by selling 'Yahavinoda' (artisanal handicraft) products and doing other projects to be distributed to the prisoners who produced those items,⁵⁵⁹ and this was confirmed by prisoners in ARP and BATRP who were part of this initiative. Apart from that, the Commission was informed that in POPC the income obtained by selling products manufactured by prisoners is transferred to the Prisoner Welfare Fund.⁵⁶⁰ The Commission was informed that the Prisoner Welfare Fund

⁵⁵⁷ Circular No. 11/2010 also states the money allocated to be paid for the dancers should be deposited in bank accounts opened in the NSB and the passbooks should be handed over to them upon their release.

⁵⁵⁸ Performance Report – 2017 published by the Department of Prisons at page 38 mentions 25% is allocated as 'Payment to Dancing Referees' and does not mention 'Payment to Prisoners'

⁵⁵⁹ The distribution of profits after deducting the advance funds obtained for production of Yahavinoda items and different projects should be as follows:

1. To the Prisoners Welfare Fund - 10%
2. To the Prisoners Welfare Association - 40%
3. To the convicted/unconvicted who produced the items - 40%
4. To the Government Consolidated Fund - 10%

⁵⁶⁰ Section 5 Prisoners' Welfare Fund Law (No. 18 of 1973): The Commissioner of Prisons shall, subject to such instructions as may be issued to him from time to time by the Secretary, have the power to expend moneys lying to the credit of the Prisoners' Welfare Fund for any of the following purposes: -

consists of revenue generated from selling the products made by prisoners and from a percentage of their incomes; there is no contribution made by the government to this fund. The Fund is managed and audited by the DOP.

Addressing the problem of low wages, in 2003 the SP of Prison Industries in a letter addressed to the CGP through the Commissioner – Supply, mentioned that about 2000 prisoners were working in prison industry sections at the time. He highlighted that the wages of prisoners had not been amended in more than twenty years (in 2020 for more than thirty-seven years). It further highlighted that the psychological state of prisoners can be improved by increasing wages, resulting in increased efficiency and emphasized the need for a proper savings system. The appointment of a committee to inquire into the amendment of the wages scheme was recommended, yet, as far as the Commission is aware, no further steps were taken in this regard.

Prisoners' lack of awareness about remuneration and savings

The Commission observed that most prisoners were not aware of the existing remuneration systems described above, or were not aware of their entitlements. It was revealed that the orientation programme for new entrants did not provide a comprehensive introduction to the remuneration system, and the prisoners' information on this matter was based only on what other prisoners have told them. This is illustrated by the following exchange that took place in MCP between an interviewer and a prisoner:

Q: "So when they select you to work parties, do they inform you that you would be paid a particular amount?

A: No.

Q: Doesn't the SP inform you?

A: No.

Q: Is there a person to teach the work in the section?

A: Yes, there is a person.

Q: Does that person say anything?

A: No, he doesn't.

Q: Is that a uniform clad officer?

-
- (a) spiritual and religious welfare of prisoners;
 - (b) educational welfare of prisoners;
 - (c) provision of recreational facilities and other amenities to prisoners;
 - (d) payment of rewards to prisoners;
 - (e) payment of repayable advances for organizing exhibitions and the maintenance of canteens for prisoners.

A: Yes.

Q: Isn't there anyone who talks about payment? Is there no talk of a payment?

A: I have neither heard anything nor do I know anything about it.

Q: Have you heard of others getting paid or have you heard others speaking about payments?

A: No.

Q: Absolutely nothing about what others are being paid?

A: No."

Another prisoner from WWC stated:

A: "They give us an excessive amount of work which makes us work to death.

Q: Do they pay you?

A: What pay! Only if we work, they will let us eat otherwise that will also not be given to us. Otherwise they say, we come here and eat for free and this and that and scold us."

Misconceptions amongst prisoners about payments were rampant. Most open prison camp/work camp inmates island wide were of the belief that they are not entitled to be paid, since convicted prisoners are required to be engaged in work according to national law. There is also a belief that prison services/domestic service parties, such as kitchen party or cleaning party, are not paid. A WCP party inmate mentioned, "I only know that everyone is paid 85 cents because somewhere in the law it says slave labour is illegal. They take 60% of this to the welfare and 40% of this only belongs to us". In MCP, a lifer was of the opinion that lifers are not paid even though the convicted are paid. The higher level of awareness among prisoners employed by PGM, Work Release Schemes, etc. about their entitlements compared to prisoners earning Rs. 2 per day, indicates that the wages of the latter may not be considered as substantive or relevant to warrant being informed of their entitlements.

Misconceptions with regards to the savings system were also rampant. WCP rattan party inmates mentioned that it was only about four years ago that bank passbooks from the BOC were introduced to deposit their daily wages, and he believed that the bank passbook will be given to him upon release from prison. WCP soap party inmates mentioned that People's Bank agents visited prison and obtained their details some time ago, but they have not seen the passbook and are unaware of the amount in their accounts. It should be noted that inmates from three different work parties in the same prison (WCP) mentioned three different state banks as the custodian of their wages. One WCP party inmate mentioned,

"Only some get bank passbooks, not everyone. I think it's IG-1 and up only. Don't know anything about any payment scheme or bank passbooks". The following exchange in MCP also illustrates that prisoners across all institutions hold different assumptions with regards to the payment scheme, as they are not duly informed by the administration:

A: "After being convicted and put in prison we are assigned to work parties. Only after working for six months in that section do we start to get paid. I don't know, but they say we get 75 or 80 cents per day. That's what I know. I have now served for ten years here.

Q: Apart from knowing the amount that is paid, do you know whether it comes to you or is it deposited in an account? Do you have any information?

A: They say that an account has been opened after having created a report and having taken our signatures. They informed us that there is an account but we haven't seen that [the passbook].

Q: You haven't seen that with your own eyes?

A: Not with my own eyes.

Q: Are you not informed monthly or every six months or so that a particular sum has been deposited?

A: No. We haven't been informed as such. After this SP came, a passbook was created. [...] The money goes straight to those passbooks they say but I haven't seen such a book. We had to sign some forms. We had to give our addresses also."

It should be noted that SMR 54 states that upon admission, every prisoner shall be promptly provided with written information about the prison law and applicable prison regulations and his or her rights, including authorized methods of seeking information, among other things. The misconceptions prevalent regarding payment schemes has resulted from the absence of proactive disclosure of information.

Lack of opportunity to utilise their earnings

SMR 103(2) states that prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family, and Section 295 (c) of the SRs⁵⁶¹ affirms this. SMR 103(3) states that the system should

⁵⁶¹ 'A Class 1 prisoner whose conduct and industry has been exemplary, may make a request to the SP for permission to utilise up to half their earnings at the time for the following purposes:

i. on the purchase for the use of that prisoner of religious or educational books or other books, which in the opinion of the SP are suitable for introduction into a prison and are likely to promote the mental and moral development of that prisoner;

provide that a part of the earnings be set aside by the prison administration to constitute a savings fund to be handed over to the prisoner on his or her release. Circular No. 13/2013, titled 'Depositing Prisoner Wages and Paying Wages Back' stipulates the procedure to be followed when depositing prisoners' wages.

The Commission came across some instances where inmates had been allowed the opportunity to utilise their earnings, either to buy approved articles for their own use or to send a portion of their earnings to their families. In MCP, an inmate mentioned that, at the time of a previous SP, they received goods equal to what they thought was their salary about twice a year (called '*Padi Badu*', i.e. 'Salary Goods'). He mentioned that for example, if there was Rs. 1500 in his name, then he received goods such as soap, toothpaste, food items worth Rs. 500. He said that when another SP assumed duty that system stopped. It was specifically said that the prisoners at MCP who work at local government institutions do not have the opportunity to transfer the money they earn to the family. However, the majority of prisoners engaged in the PGM workshop stated that they have requested their total income or at least half of it to be transferred to their family, which they confirmed had been done because they had seen their passbooks.

Circulars No. 58/2006 and 16/2013 allow prisoners serving prison sentences in lieu of fines to pay their fines using the money they earn through daily prison work.⁵⁶² Circular 16/2013 further states that it is the duty of the Welfare Branch to inform prisoners of the opportunity to pay their fine using prison wages. The Commission found that prisoners were not aware they can pay their fines using the money they earn. It should be pointed out that it is unlikely that the income earned by prisoners serving a short sentence would cover their fine, particularly since prisoners are not awarded any payment for the first six months. Thus, this opportunity would only be available to prisoners employed on short-term work release as they can earn up to Rs. 350 per day, and can be engaged in work release if they have been sentenced to less than two years in prison. However, as discussed above, prisons are reluctant to send inmates on short term work release due to logistical and administrative challenges associated with this programme.

Shortcomings of the savings system

Circular 13/2013 that the instructions regarding the procedure to be followed when depositing the wages of prisoners were issued specifically because the internal audit division reported the following irregularities regarding prisoner wages:

ii. on the purchase for the use of that prisoner of articles of food or drink as may be approved by the Commissioner in writing;

iii. in rendering financial assistance to any member of the family or dependant of that prisoner, who appears to the SP to be in need of such assistance; or

iv. for such other purpose as may be approved by the Commissioner in writing.'

⁵⁶² Department of Prisons, Circular No 16/2013, the money withdrawn from the bank should be paid to the court by which the fine was imposed, through the Superintendent of the prison nearest to that particular court. The Superintendent should assign a welfare officer or a senior officer conducting judicial tasks with the duty of paying the fine to the court and returning the receipt to the prison where the prisoner is kept.

- Not paying wages to prisoners upon release;
- Prisoners being subjected to several inconveniences when they are summoned back to prison after their release to collect payments;
- Not depositing wages in prisoners' savings accounts; and
- Accumulation of unpaid prisoner wages as a huge balance in the Common Account and being credited to the Government Income Account as Treasury Circular 200/2009 in 2010.

When the Commission inquired from prison officers about the savings scheme, many officers said that they maintain bank passbooks in prisoners' names, and that the prisoners can inquire about the current balance any time they wish. They stated that prisoners could also request to see the passbook, and that the passbook is handed over to prisoners upon release, following which prisoners will be able to access the account. However, the Commission observed that due to the systemic and inherent power imbalance in the prison system, prisoners hardly demand or inquire about such, if details are not being proactively disclosed to them.

Even though the above Circular was issued in 2013 to rectify those issues, it was observed by the Commission that almost all issues identified in the Circular are still prevalent in prisons across the country. Most prisoners have not seen their bank passbooks and are not aware whether the administration deposits money in their accounts. The prison administrations have not proactively and regularly disclosed bank balances to the prisoners. When the Commission inspected a few bank passbooks at some of the prisons, it was noticed that they had not been updated.

6. Impact on post imprisonment employment

SMR 98 states that so far as possible the work provided should maintain or increase the prisoners' ability to earn an honest living after release. It must be reiterated that if the system of prison work does not function in a manner that will increase prisoners' employability and their chances of being able to find a job after release so as to decrease the likelihood of reoffending, the system is not fit for purpose.

The Commission was also informed that many prisoners who engage in cultivation at work camps and open prison camps did not wish to pursue cultivation upon release; one reason for this, as identified by the Commission is that many prisoners who are being sent to open prison camps/work prisons are drug offenders from Colombo and suburbs, where there is no agricultural land. Only those who are from rural areas with access to land would be able to engage in cultivation after release. This highlights that the lack of individualisation of prison work could result in many prisoners held in camps having wasted the many years they engaged in agriculture, if it does not provide any post-release employment opportunities for them. Despite these shortcomings, some prisoners stated they appreciated the opportunity they had to learn a skill or trade, such as this inmate from GRP:

Q: "Do you think this work would be useful?

A: Definitely. Anything we learn won't go to waste. We can't take anything from here, the only thing is, we can learn something and take it with us. That is my feeling."

Another prisoner from WCP bakery party stated:

"Earlier I worked really hard in all three stoves in the bakery. I worked at the table inside as well and thanks to that, I can manage a bakery of my own. Now I have that strength and knowledge. They told me that they would give me all the help I need from this place. So, in the name of God, I can become a better person when I am released without associating bad friends."

Commissioner ISD mentioned that prison work is geared to enable prisoners to secure jobs upon release by making prisoners experienced in certain industries. It was observed that in MCP, convicted prisoners rotate among work parties till they near the end of their sentence, upon which they are assigned to outside work parties. This practice has positive and negative elements; on the one hand it allows inmates to familiarise themselves with many industries without being limited to one, but on the other hand it does not allow them to become experts in a certain field. The success of this practice depends on the individual capabilities and the will of each prisoner; some can try their hand at a few trades and discover they are good at many, while others would not learn any trades properly. However, this subjective approach to prison work is likely to be unhelpful when securing jobs upon release, than a streamlined approach which assigns prison work after an assessment of the prisoner at the very beginning of the sentence where his individual preferences, skills and plans upon release are taken into consideration. A quote from an inmate of the WCP blacksmith party points to a loophole in the system, which makes it difficult for released prisoners to utilise their prison work experience in securing a job:

"No one teaches us. The *bass* trains new people. There are different sections in the blacksmith party – those who use the hot iron, those who use the hammer, those who use the cutting tools, those who do the bending etc. One person knows only to do one thing. So, when they go out, they won't be able to put this into use. But if you want, you can move around the sections and learn everything. That's what I have done. I know how to do everything now."

Post-release assistance

When queried whether there were any placement services that help prisoners secure a home and a job upon release, the Commissioner ISD replied: "No, there is nothing in operation like that". This was echoed by many DOP officials who stated that they lack the support of the government to implement such programmes, as there is no fund allocations or mechanism in place to secure post imprisonment employment for prisoners. It should be noted that the

failure to secure a job upon release could be a contributor to recidivism. An inmate from KRP mentioned:

"A: It is hard for me to find food tonight if they release me today. I have to begin from point zero when I get released.

Q: Are there any programmes that could help you restart your life upon release?

A: According to my knowledge, they gave one carpentry tool kit to one person who worked with us. Since he worked well, they gave it to him; we also work like that. This is the thing, when releasing 1000 inmates they do one thing for a single person and then highlight that as if they have given to all 1000."

It was said by the officers of the Rehabilitation Division in DOP, that some prisoners receive equipment kits upon request after they are released. The MJF Foundation (Dilmah) reportedly provides considerable assistance for released prisoners in the form of machinery and equipment with which they can earn a livelihood. The Commission was also informed that members of the Kandyan dancing troop were allowed to keep the traditional dancing attire (*wes kit*) which they were provided to use to dance professionally after their release.

According to the Rehabilitation Division, attempts are made to source tools and equipment for released prisoners who have requested them, to assist their new employment prospects, with assistance from the Prisoner Welfare Sub Committees appointed for each prison. However, this is done on an ad-hoc basis as there is no budgetary allocation or mechanism in place to provide post release assistance for all prisoners. Thus, it must be pointed out that any attempt by the DOP to resettle prisoners upon release, despite the financial limitations of the Department, is highly commendable.⁵⁶³

SP of WCP at the time, SSP Mr. Uduwara highlighted the need to reimagine prison work as a means of rehabilitation in a manner which is suited to the 21st century. WCP houses the largest convicted prisoner population of the country and it also has the largest number of prison work parties. SP Uduwara stated that prison work should be both beneficial to society and to the prisoner. He pointed out the need to standardize prison work that would make it more meaningful for the prisoner and help in his/her rehabilitation, by preparing him/her for post release employment. He further said:

"I have told the CGP, even the minister, that we need to think beyond what is currently available. We need to look forward and see what is useful and productive. I have asked CGP whether, instead of hiring vocational instructors, we should ask the state technical institutions to provide us with instructors. They can come to prison and do proper trainings and classes. We need to

⁵⁶³ For a detailed discussion on post release assistance provided to prisoners, please refer chapter Rehabilitation of Prisoners.

revamp the recruitment system. We need to completely reorganize the entire system of prison work. Like in the school: the instructors should have a proper lesson plan and prisoners should be able to go through the levels. For example, they do lesson one today- theoretical knowledge and practical knowledge. Then lesson two after that. Properly structured classes. That's what's needed. What's happening now is just the same routine. People are just doing the same run every day with no real purpose, just so that the days will pass. We need to rethink the entire system. We need to first understand what it is we want and then design how to get there. Do we need to just keep people busy or is it rehabilitation that is needed? If what we need is rehabilitation, then we need to rethink how we do things."

7. General observations

The Commission observed that only prisoners eligible to work under the law are found to be engaged in prison labour, but amongst such prisoners even those who have been declared medically unfit for work were also seen to be engaged in hard labour, often in open prison camps and work camps, disregarding the recommendation of the MO.

Conditions of spaces where prison work was being undertaken were observed to have below required standards of light, ventilation and temperature control, while safety measures were unsatisfactory. The number of working hours was said to exceed the recommended number of hours with inadequate time for rest and holidays, and many prisoners reported being required to engage in work on Sunday.

The type of work opportunities available to prisoners involve low skilled labour intensive work, which would restrict prisoners' access only to outdated and menial employment opportunities after release. This would limit the success of the correctional system, in that if there is unsuccessful re-integration due to the inability to earn a living wage, it may result in recidivism. Another factor that could limit the potential of work opportunities in prison, is the lack of post release support to which prisoners have access, for instance to procure equipment and tools that will enable them to start their own business venture. Current attempts at providing prisoners with assistance are minimal and largely dependent on donations and contributions from external parties with minimal financial support from the DOP.

Collaborative ventures with the private sector, such as the PGM initiative, are able to provide prisoners with a higher level of remuneration and allow them to learn skills that could be of use in the current job market. Furthermore, prisoners are able to transfer some of their monthly earnings to their family members and contribute to their families meeting their livelihood needs. This is observed to be one of the key benefits of such ventures since a widespread concern shared by prisoners was the impact of their imprisonment and loss of earnings, on their family's financial situation.

The remuneration system for prisoners was observed to be not reflective of the value of the work prisoners are required to perform, nor is it even remotely close to market rates. Thus, the meagre remuneration means that the work undertaken during imprisonment will not render any financial benefit, and is not likely to encourage prisoners to view the work as means of rebuilding their lives post-release. The rehabilitative potential of prison labour is therefore not fully being realized in the current system, but rather prison work is used as a tool to keep prisoners occupied throughout the day. Although the calculation of wages is based on the daily work output of a prisoner, it is not effective in practice when many prisoners remain idle all day as there are not enough resources and equipment for all prisoners to be engaged in work simultaneously at many prisons.

18. Early Release Measures

1. Introduction

The primary objective of the prison system in Sri Lanka is the ‘social reintegration of inmates as good citizens through rehabilitation’⁵⁶⁴. SMR 4 states that the purpose of punishment (protecting society and reducing recidivism) can be achieved only if the period of imprisonment can ensure the successful reintegration of prisoners into society whereby they can live as law-abiding citizens. The Tokyo Rules⁵⁶⁵ state that, ‘the competent authority shall have at its disposal a wide range of post-sentencing alternatives to avoid institutionalization and to assist offenders in their early reintegration into society’.

When individuals serve a prolonged period of incarceration and are removed from society for a long period of time, their ability to successfully re integrate into society may gradually diminish. When, or if, they are finally released into society, they will be entering a world they have not been a part of for many years, and a world which may have changed tremendously while they were serving time. Such individuals do not have the means or capacity to support themselves and may be estranged from family members or associates. Due to their age and the impact of prison conditions on their mental and physical health, they may be suffering physical as well as psychological ailments, which may be exacerbated if they have no support system, such as family to help them deal with post-return challenges. This would only exacerbate the post-release challenges they face and place them in a vulnerable position.

The inability to re-integrate undermines the objectives of the criminal justice and correctional process which aim to ensure offenders are able to become productive and law-abiding citizens after they are released. Instead it renders them helpless and potentially makes them vulnerable to re-criminalization and recidivism. In particular, long term incarceration of prisoners is a burden on the correctional system and taxpayer funds, when correctional institutions end up operating as hospices for large numbers of elderly prisoners who have served time in prison for most of their life. Without the chance and prospect of early release as a reward for good behaviour, prisoners have no incentive to maintain good conduct during their sentence nor spend their time in prison productively by engaging in rehabilitative programmes and improving their skills. This phenomenon is commonly observed among condemned prisoners which was noted by the Commission. Further, prison officers stated to the Commission that they are afraid of upsetting or aggravating condemned prisoners who do not have any incentive to maintain good behaviour in prison as they are already serving an indefinite sentence as well as enduring harsh conditions of imprisonment and hence cannot be ‘punished’ any further.⁵⁶⁶

⁵⁶⁴ Website of Department of Prisons, Sri Lanka: <http://www.prisons.gov.lk>

⁵⁶⁵ Tokyo Rules 1994, r 9.1

⁵⁶⁶ For a detailed discussion, please refer to chapter Death Row Prisoners.

Early release can be considered one of the objectives of the process of rehabilitation and the ultimate reward for prisoners who maintain good conduct and participate in rehabilitation activities. Consequently, the promise of early release serves as the biggest incentive for prisoners to make an effort to reform themselves, as long as the process is administered efficiently and equitably. Early release also ensures that prisoners return to society while they still have the capacity to reintegrate successfully and are equipped to behave as law abiding citizens.

Early conditional release is recognised as an effective measure in the reduction of prison populations in a thematic discussion held by the Commission on Crime Prevention and Criminal Justice of the United Nations Economic and Social Council.⁵⁶⁷ Adequate social support networks, the continuation of care following any treatment received in prison, and coordination between prison administrations and services in the community, are recognised as pivotal measures for early conditional release to achieve its aim of enabling the offender's gradual social reintegration following release.

The report⁵⁶⁸ of the Taskforce on Judicial and Legal Causes for Prison Overcrowding and Prison Reform states that the large numbers of condemned, life and long-term prisoners contribute greatly to prison overcrowding. The Task Force recommends the commutation of sentences of condemned and life prisoners, and the evaluation of the rehabilitation of long-term prisoners with a view to early release and reintegration.⁵⁶⁹ A life prisoner at PCP clearly explains the issue of overcrowding, which is exacerbated by the lack of systematic release procedures, highlighting the urgency of reviewing and re-starting the process of early release procedures. He states:

“In this prison, ward F has F1, F2, F3, A1 and A2. All four wards are meant to hold only forty people. In my ward which has a capacity of forty, now we have seventy-one there. Then F3 and E3 have a capacity of sixty-five, but there are hundred.

The main reason for overcrowding in this prison, is not failing to construct new buildings but the lack of proper pardoning for long-term prisoners. If [such a system is in place], many reformed prisoners will be released from prison. If our long term [life sentence] is commuted to twenty years then nearly hundred persons will eventually be released from this institution. When you are commuted to twenty years, if the time you have already spent in prison is considered when calculating the twenty-year sentence,⁵⁷⁰ those

⁵⁶⁷ E/CN.15/2009/15 - Economic fraud and identity-related crime; and penal reform and the reduction of prison overcrowding, including the provision of legal aid in criminal justice systems

⁵⁶⁸ Dated 9 November 2016

⁵⁶⁹ The First Report of the Task Force on Judicial and Legal Causes of Prison Overcrowding and Prison Reforms 2017, pp 4, 5

⁵⁷⁰ When calculating a commuted sentence with consideration to the time already spent in prison, allows the prisoner to spend less time in prison after commutation, to be eligible for early release. For example, a prisoner with a life sentence who has been in prison for fifteen years, when commuted to a twenty-year sentence would have to serve twenty more years from the day of commutation, if the time spent in prison is not counted in for

people who have spent twelve to fifteen years can even go on Home Leave, and thereafter to License Board. Maybe some people will be eligible to go to Open Prison Camps. This is how you reduce overcrowding."

The current manner in which early release measures are implemented, however, is rife with political and administrative challenges that limit the success of the correctional process as a whole and is not effective in allowing a prisoner to reform themselves for the chance to be released from prison. This has thus increased the burden on the DOP, as well as the taxpayer, of having to maintain an overburdened incarceration system. Reviewing and revising the implementation of these mechanisms is a way of addressing numerous problems that ail the penal system, including prison overcrowding. Without an efficient system of early release, the principle of rewarding good conduct of prisoners becomes distorted and reduces the incentive for prisoners to participate in their own rehabilitation.

The following sections will analyse the early release measures available for prisoners as well as the shortcomings that limit the success of the rehabilitation and early release process and how they can be rectified.

The chapter is structured chronologically to outline the different systems and processes that come into effect on the path towards early release during the sentence period.

1. A death row prisoner, who is serving the most severe penalty in the penal system, in order to become eligible for early release, must first have their death row sentence commuted by a commutation committee from an indeterminate sentence period to a normal convicted sentence with a determined end date.
2. After this step, like other normal convicted prisoners, s/he becomes eligible to be assessed under the system of evaluations – a periodic evaluation of convicted prisoners' behaviour and conduct as well as rehabilitation progress over the years, with a view to present a case for their early release from prison.
3. As a convicted prisoner, while engaging in work parties at the prison, the prisoner will also become eligible for sentence remission, whereby the daily productive output and lack of misconduct of the prisoner is quantified, and a proportionate portion of their sentence is forgone, if they manage to achieve the requisite daily marks. This is also another process by which a prisoner may be one step closer towards early release.
4. Finally, once the prisoner has served the mandatory minimum term before they can become eligible for early release from prison, they can go home for a period of seven days for the first time under the Home Leave procedure.

his sentence calculation. This has to be decided by the MOJ in the letter the Ministry issues stipulating the conditions for commutation, and is thus not at the discretion of the DOP.

5. After two or three successful Home Leave periods, the prisoner can be presented before the License Board. The License Board has the function of deciding if a prisoner is suitable to be released early on license, by evaluating their behaviour and conduct over the years, as well as their behaviour during Home Leave, and other factors discussed in detail below. Once the approval of the License Board is confirmed, the prisoner may be released early from prison.

The chapter will therefore begin by discussing Commutation Committees, as the first step towards early release, followed by Evaluations and Marks and Remission – which are two processes that must come into effect for early release to function. Finally, the chapter will take a deeper look at the systems of Home Leave and License Board, the final hurdle on an elaborate process of early release, that must be overcome for a prisoner to be released from prison.

The system of general and special pardons is discussed at the end, because it is a system of early release that operates separately to the early release process outlined above, whereby power to pardon prisoners, as enshrined in the Constitution of Sri Lanka, can be exercised at the discretion of the Executive for any prisoner.

The MOJ is responsible for making recommendations to grant pardons, commutations, remissions, respites, and suspensions in relation to the sentences of any offender. The aforementioned measures are discussed in the order in which they are implemented. The commutation of condemned and life prisoners to a specific term of imprisonment must first occur so that they are no longer serving an indefinite sentence, at which point the system of evaluations will become applicable to them as they will be categorised as convicted prisoners with fixed term sentences. When they come under the category of normal convicted prisoners, they will become eligible for remission of their sentences, and finally, upon completing a considerable portion of their sentence, will become eligible to go on Home Leave and then be released early on License after successfully completing Home Leave. Measures for early release outside this progressive chain of events include special and general pardons. Each of these processes will be discussed in detail in this chapter.

2. Commutation committees

Commutation committees are appointed by the MOJ to commute condemned and life sentences, as well as long-term sentences, to a specific term of imprisonment, usually twenty years. In order for condemned and life prisoners to benefit from the system of rehabilitation, their sentences need to first be commuted from an indeterminate period to a fixed number of years, with a stipulated end date.

Prior to 1996, annual commutations were granted by the President. For example, annually, all prisoners on death row were commuted to life imprisonment, and all prisoners serving life imprisonment had their sentences commuted to a sentence of twenty years. Senior officials at the DOP informed the Commission that in 1995-1996, there was a public outcry

against the early release measures of the MOJ for prisoners who had committed crimes that outraged society. Senior officials at DOP stated that as a result of the public outcry the government was pressured to rethink the early release measures in place, such as the regular commutations and early release of prisoners convicted for serious crimes. This led to the appointment of a committee by the President at the time to study the early release measures in place and recommend to the Cabinet of Ministers on action to be taken. Although a report was submitted to the President, as referenced in the letter dated 4 March 1999 written by the then President Chandrika Bandaranaike Kumaratunga (discussed in detail below), the Commission had no access to this report. Despite the establishment of the said committee, from 1996 to 1999, prisoners who were evaluated by the DOP and found eligible to be considered for commutation were commuted by the President. For example, in 1996, the President commuted the sentences of fourteen life prisoners to a specific term of imprisonment of twenty years.⁵⁷¹ These prisoners were originally sentenced to death, and were later commuted to life.⁵⁷² Similarly, in 1998, a group of ten life prisoners (whose sentences were earlier commuted from death sentence to life imprisonment) were also further commuted to twenty years imprisonment.⁵⁷³

The discourse surrounding early release measures and government's decision to re-evaluate the existing early release measures, and the result of the said re-evaluation is then illustrated and explained in a letter dated 4 March 1999 by the then President Chandrika Bandaranaike Kumaratunga. The letter describes the President's reasons for suspending regular commutation of death sentences to life sentences. The letter says:

'There has been a significant increase in organized crime and the offence of murder. The public justifiably feels that such offenders should not be dealt with leniency. In the circumstances, I am of the view that the commutation of a death sentence to a term of imprisonment and the commutation of a term of life imprisonment to a specific term of imprisonment should not be done as a matter of course, irrespective of the facts of the particular cases.'

Further, in her letter to the President sets out 'qualifications' for a prisoner to be eligible for commutation at different levels i.e. when is a death row prisoner eligible to be commuted to life, when is a life prisoner eligible to be commuted to a specific term of imprisonment and states that names for commutation should be sent to her only if they adhere to the criteria below:

- 'A death sentence will be carried out when the trial judge submits a report, endorsed by the AG and is accompanied by the recommendations of the Minister as per the provisions in Article 34 (1) of the Constitution;

⁵⁷¹ Letter from the Presidential Secretariat to the Secretary of the Ministry of Justice and Constitutional Affairs regarding 'Commutation of Imprisonment as per Art. 34 (1) of the Constitution' (13 November 1996)

⁵⁷² ibid

⁵⁷³ Letter from the Presidential Secretariat to the Secretary of the Ministry of Justice, Constitutional Affairs, Ethnic Affairs and National Integration regarding 'Commutation of sentences as per Art. 34 (1) of the Constitution' (17 April 1998)

- Where the trial judge, the AG and the Minister do not unanimously recommend that a death sentence be carried out, the death sentence will be commuted to life;
- Where a sentence of life imprisonment is imposed by a Court or a death sentence is commuted to life, the prisoner should serve at least twenty years in prison before the life sentence is further commuted. A prisoner will be eligible for remission only thereafter.'

Consequently, this letter issued by the President resulted in the suspension of early release measures based on the evaluations carried out by DOP as per PO. However, the DOP continued to evaluate prisoners and send names of eligible to MOJ, which continued to forward the names to the President⁵⁷⁴. The Commission's efforts in acquiring the relevant government circulars suspending the evaluations were unsuccessful. In 2002, President Bandaranaike commuted a group of life prisoners who had been commuted from death row to life to a specific term of imprisonment i.e. 20 years, because they were considered to have fulfilled the qualifications listed out in the letter issued by the President in 1999.

In 2004 several life prisoners went on hunger strike in WCP against the suspension of the annual commutation (which was in place prior to 1996). The suspension of the regular commutation led to commutations of sentences of only certain prisoners in an ad hoc manner, based on the individual appeals to the President. As a result of the hunger strike, a committee was appointed by the MOJ to inquire into the protest. The Committee recommended that a Board of Review be established to recommend commutations for life prisoners. In 2007, the said Board of Review, chaired by retired High Court Judge L. M. de Silva interviewed prisoners, called for reports on life prisoners from the prison authorities, and prepared a report with its recommendations on commuting life sentences of the majority of life prisoners to a specific period of imprisonment i.e. twenty-five or twenty years.^{575,576} The Board of Review did not recommend the commutation of some life prisoners and instead recommended they be reviewed at a later time. This recommendation however did not specifically state when these prisoners should be reviewed and how the review should take place. This Board of Review thus, served as the first ad- hoc commutation committee. This served as an ad hoc commutation committee as it was initiated as a solution to a crisis in prisons due the mass hunger strike, and commutation by committee did not become an official policy.

Through the years, ad hoc commutation committees have been established as a solution to the growing number of condemned prisoners and other long-term prisoners, and to further develop the rehabilitation objective of incarceration. The first such ad hoc committee following the Board of Review was established in 2008, and as per the committee's recommendation, 132 life prisoners were commuted to specific periods of imprisonment i.e.

⁵⁷⁴ Motion dated 3 July 2009 by the Attorney at Law of the Respondents (AG) submitting the report of the CGP to the AG regarding the evaluations. FR 235/2008

⁵⁷⁵ SC FR 235/08 Rajapaksa Pathiranage Ratnasiri and others v Commissioner General of Prisons and others

⁵⁷⁶ 'Prisoners in Welikada have faced injustice in the commutation process' *Lankadeepa* (16 June 2004)

twenty years or twenty-five years.⁵⁷⁷ The members of past committees have included retired Supreme Court judges, former Commissioner Generals, Commissioner General of Prisons, sociologists, representatives from the MOJ and the AG's Department.

The current procedure is to appoint ad hoc commutation committees, for which the Ministry has to obtain cabinet approval via a cabinet paper. The selection of members is entirely at the discretion of the Ministry and there are no transparent criteria stipulated by law or practice to make the appointments. The committee is tasked with reviewing and evaluating prisoners and deciding on their eligibility for commutation. The Commission has observed that these committees have no consistent established working methods or standard criteria, and thus the working methods adopted by each subsequent ad hoc committee can differ from previous committees. For instance, commutation may be denied to a prisoner because the manner in which they committed the crime was considered heinous by the Committee, and granted to another prisoner because of the good behaviour they had maintained in prison while serving their sentence.

In October 2013, a committee was appointed for a term of three years by the then Minister to review condemned prisoners with the aim of commuting them to life. The committee was chaired by retired Justice P. Edirisooriya and included nine other members. Condemned prisoners whose judicial proceedings were concluded as of 26 September 2013 were eligible to be produced before the committee. Based on the recommendations of the committee, the President, by virtue of the powers vested by Art. 34 of the Constitution⁵⁷⁸ commuted several death sentences to life imprisonment. The Committee, which was disbanded in 2016, made recommendations on four occasions, consequently, resulting in four rounds of such commutation, which are set out in Table 18.1. below. It should be noted that the implementation of the recommendations of the committee continued until early 2017.

⁵⁷⁷ Letter from the Presidential Secretariat to the Secretary, Ministry of Justice and Law Reforms regarding 'Commutation of Life Sentences to a Specific Period' (10 July 2008)

⁵⁷⁸ The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, art 34, '*Grant of pardon*: (1) The President may in the case of any offender convicted of any offence in any court within the Republic of Sri Lanka –

(a) grant a pardon, either free or subject to lawful conditions;
(b) grant any respite, either indefinite for such period as the President may think fit, of the execution of any sentence passed on such offender;
(c) substitute a less severe form of punishment for any punishment imposed on such offender;
or (d) remit the whole or any part of any punishment imposed or of any penalty or forfeiture otherwise due to the Republic on account of such offence:

Provided that where any offender shall have been condemned to suffer death by the sentence of any court, the President shall cause a report to be made to him by the Judge who tried the case and shall forward such report to the Attorney-General with instructions that after the Attorney-General has advised thereon, the report shall be sent together with the Attorney-General's advice to the Minister in charge of the subject of Justice, who shall forward the report with his recommendation to the President.'

Table 18.1- Commutations granted during 2015-2017

Date	No. of prisoners commuted
2015.12.11	34
2016.04.20	83
2016.05.20	70
2017.02.04	60
Total	247

Source: Progress Report 2017, Ministry of Justice⁵⁷⁹

On 08 February 2017 the Ministry received cabinet approval to appoint a new committee to make recommendations with regard to commuting the sentences of condemned prisoners, life prisoners and long-term imprisonments⁵⁸⁰ (those with more than twenty-year sentences). This Committee reviewed prisoners with long term sentences of whom the names of 700 prisoners were forwarded by DOP to the Committee as eligible to be considered for commutation in 2018. By 2019 April the committee had begun reviewing life prisoners for commutation.

The procedure followed by the commutation committee

The current committee includes a criminologist and a forensic psychiatrist in addition to representatives of the MOJ, the AG's Department, the DOP, and is chaired by a retired Supreme Court judge. The review process of the Committee does not discriminate on the basis of offences or the crimes for which the prisoner has been convicted. The Commission was informed by Committee members that since the Committee is tasked with reviewing the rehabilitation of a prisoner, the type of offence or crime for which s/he is charged with is immaterial.

The committee reviews the file of prisoners to assess their prison life, and considers their rehabilitation, the likelihood of recidivism and the likelihood of social integration. Through the Ministry, the committee receives case records of the prisoner, a report from the rehabilitation officers of the prison, a report from the officer in charge of the prisoners' party [i.e. vocational training], and calls for police reports⁵⁸¹, as well as when needed, 'social reports'⁵⁸². According to past and current members of commutation committees, factors they consider to ascertain the level and quality of rehabilitation of a prisoner include, but are not limited to:

⁵⁷⁹ Ministry of Justice, *Progress Report 2017*, p 18

⁵⁸⁰ ibid

⁵⁸¹ In addition to the nature of the particular crime for which the prisoner is convicted, the committee may require more information on the history of criminal behaviour of the prisoner and whether the prisoner is suspected of being involved in ongoing criminal matters

⁵⁸² The committee may evaluate the social support available to a prisoner once released from prison. With that in mind they would call for a report on the prisoner's family background. In certain instances where the crime is considered to be of grievous nature, reports from the victims' families may also be included.

- An unblemished disciplinary record in prison [i.e. should not have been produced before the Prison Tribunal];
- Participation in personal and spiritual development programmes such as Sunday School, skills education;
- Prisoner's willingness to acquire educational qualifications, such as sitting for Ordinary or Advanced Level exams, studying for an undergraduate degree, studying for a master's degree;
- Participation in vocational training programmes and positive reports submitted by the officer in charge of *party* work;
- The general disposition of the prisoner; and
- The level of regret or remorse they may express with regards to the crime committed.

The committee calls prisoners for an interview during which questions about the offence committed are asked, in addition to questions relating to the progress of their rehabilitation in prison. A prisoner and the former CGP described the process thus:

"They asked me to tell why I committed this crime. I told them the truth about my case and talked about the injustices that had happened to me."

WCP/DP/S/63

"We interview them for about twenty minutes. Sometimes we can understand when they speak that they are lying. For example, a prisoner will say I never committed this rape and murder I was framed, but you see in the case records that this prisoner's DNA was found on the victim. So, when they are obviously lying, we cut the interview short. If someone is lying like that about a crime they are proven to have committed, then what guarantees are there to say this person will not commit the same kind of crime if they are released early?"

Mr. H.M.N.C. Dhanasinghe, former CGP⁵⁸³

The prisoner or others may submit documents on his/her behalf. For example, the prisoners' community or religious leaders may appeal to the DOP or the Ministry. However, as stated by the former CGP, appeals from external parties for or against the commutation do not significantly contribute to the prisoner's evaluation, as outsiders would not have any insight into the prisoner's rehabilitation since s/he was sent to prison. The committee arrives at a decision based solely upon the extent of rehabilitation of the prisoner, as stated by the current committee members interviewed. The committee after evaluating the records, reports and conducting the interview of the prisoner must arrive at a unanimous decision in order for a prisoner's name to be recommended for commutation. The former CGP explained the decision-making process thus:

"If the doctor [forensic psychiatrist] tells us, this person is not suitable to be commuted because the doctor can see from his experience that this person is

⁵⁸³ Mr. Dhanasinghe was CGP until 07 March 2019

likely to be a recidivist if he were to be released early; we listen to him because he is the expert in his field. So, everyone discusses and then we decide what we should do. It's always a unanimous decision."

Once the committee draws up the list of prisoners to recommend for commutation along with individual reports, it is sent to the MOJ, which may review the list and forward it to the President for action. The Ministry may decide to delete names or filter the recommended names, i.e. remove names based on the kinds of offences and crimes committed which the Ministry believes are not deserving of commutation. Mr. Dhanasinghe (former CGP) and Ms. Piyumanthi Pieris (Addl Secretary Legal, MOJ) who had served as members of at least two commutation committees, stated that MOJ on its own cannot include names to the recommended list of prisoners eligible for commutation prepared by the committee. All prisoners must be reviewed by the committee if their name is to appear on the list prepared by the committee. However, MOJ can send names of prisoners who have not been recommended by the committee to the President separately, for example those who had appealed to the Minister or Presidential Secretariat, as it is the prerogative of the Minister to recommend prisoners for commutation or pardon. These names will be sent to the President separately and will not be included in the committee's list. The President may further review the recommended list and could remove or add names to the list or decide to filter out names depending on the offences. The President then, as per the executive powers granted by the Constitution, approves the commutation of the selected prisoners. The Ministry informs the DOP, which in turn, informs the respective prisons of the names of prisoners who have been commuted.

Shortcomings of the commutation procedure

It should be noted that the lack of established rules and guidelines may lead to arbitrary decision making by the committee, the Minister and the President. The ad hoc nature of the committee itself exacerbates its arbitrary nature and the lack of certainty attributed to the entire process. The lack of objective criteria and mandatory processes means that the personal prejudices and values of members of the committee can impact the decision-making process. This is particularly the case when committee members are not appointed through an independent procedure, bearing in mind a gender and ethnicity balance, to attempt to mitigate personal biases and prejudices. The following section analyses the procedure adopted by the committees to illustrate the arbitrary nature in which they function.

The commutation committee appointed in 2017, reviewed long term prisoners and in 2019 started reviewing life prisoners. Upon inquiry, committee members informed the Commission that their recommendations would be based on individual assessments of the prisoners rather than a blanket recommendation ,i.e. the committee would not recommend every life prisoner is to be commuted to twenty years imprisonment, and instead will recommend different types of commutation or even could recommend the release of the prisoner.

In the first round of commutation recommendations, twelve long-term prisoners were recommended to be granted a complete pardon for the remainder of their sentence, while for sixteen long term prisoners, different terms of imprisonment (which were less than their original term) were recommended. For example, among the first group of prisoners is a terminally ill person, and an elderly prisoner who has spent over forty years in prison and is considered to be a rehabilitated prisoner with no risk to the society. In the second group prisoners, all of whom had been sentenced to more than sixty years in prison, had their sentences commuted to shorter periods such as twenty years, twenty-five years, thirty years. The committee therefore has considered a multitude of factors and adopted an individual approach to each prisoner when determining whether their sentence should be reduced, if so the reduced term or whether they should be released. However, as the commutation committees are ad hoc and operate according to their own rules there is no guarantee that future commutation committees will also take an individualized approach to commutation. Furthermore, the process of rehabilitation of a convicted prisoner may take different paths and may happen at different speeds for various reasons. Hence, the commutation committee would have to adopt a process that is aware of and sensitive to the complex nature of rehabilitation. As stated by Justice Krishna Iyer in the Indian Supreme Court decision of *Maru Ram v Union of India* where the Court was tasked with evaluating a decision by the Indian parliament in passing a regulation that made it mandatory for every life prisoner to serve a minimum of twenty years in prison before being considered for commutation:

'This is strongly indicative of reformation not being the foremost object sought to be achieved by the penal provisions adopted by the legislature. A person who has committed murder in the heat of passion may not repeat his act later in life, and the reformation process in his case need not be time consuming. On the other hand, a thief may take long to shed the propensity to deprive others of their good money. If the reformative aspect of punishment were to be given priority and predominance in every case, the murderer may deserve, in a given set of circumstances, no more than a six months period of incarceration while a thief may have to be trained into better ways of life from the social point of view over a long period.'⁵⁸⁴

Commutation committees therefore should use the evaluation reports compiled by the DOP for each prisoner, as DOP has continued to prepare evaluation reports for long term prisoners, as stated in the PO, despite the suspension of regular commutations of condemned and life prisoners in 1996. These evaluation reports would offer a wealth of information about each prisoner and their process of rehabilitation and whether or not they have been rehabilitated, since prison officers have first-hand knowledge of the prisoners and are able to make comprehensive evaluations over a period of time. Since the commutation committee does not have the cumulative knowledge the prison officers possess in dealing with each prisoner, the evaluation reports of the DOP can be of immense value in conducting an individualized assessment.

⁵⁸⁴ *Maru Ram v. Union of India & ANR [1980] INSC 213; AIR 1980 SC 2147; 1981 (1) SCR 1196; 1981 (1) SCC 107 (11 NOVEMBER 1980)*

Secondly, the historical development of the commutation committees shows that once the routine commutations from condemned to life and life to a specific term of imprisonment was suspended after 1999, the commutation committees have been appointed on an ad hoc basis resulting in a long gap between commutations. For example, a life prisoner who had been a death row prisoner in 1998 and was commuted to life imprisonment in 2002 stated the following:

"I was sentenced to death on 1 October 1998. They took us to Welikada, gave us the condemned kit and locked us up as condemned prisoners. Then in 2002 I was pardoned to life. I have even gone up to the twelve-year evaluation [four-year, eight-year, twelve year]. I have been here for twenty-one years. This is the twenty second year I'm spending in prison. I'm hoping they will commute it to twenty years soon."

Male Life prisoner, ACP

It is likely that this prisoner would be presented to the commutation committee that is reviewing life prisoners since April 2019. However, this also shows that due to the lack of a regular commutation process, this prisoner has not had the opportunity to be presented to a commutation committee for the past seventeen years. This indicates that not all prisoners have an equal opportunity to be considered for commutation, given the ad hoc nature of the commutation committees.

Thirdly, during the review process the Minister or the President may make decisions based on factors such as political pressure or public opinion, rather than the diverse elements that have to be the focus of such a review, such as rehabilitation, the rights of victims, concerns of public safety etc. Furthermore, neither the MOJ nor the President is required to provide the commutation committee with reasons as to why the committee's recommendations are not followed, thereby resulting in arbitrary decision making that is not transparent.

Fourthly, the prisoner does not have the right or opportunity to appeal to the committee if s/he does not receive a commutation because as Mr. Dhanasinghe stated, "Commutations are not a right. It is a privilege. So, they don't get to appeal". This is not in line with international standards, which require any decisions on post-sentencing dispositions to be 'subject to review by a judicial or other competent independent authority, upon application of the offender'.⁵⁸⁵ The prisoner is also not informed of the reasons why s/he was not commuted, as illustrated by the letters of the condemned, who wrote about the lack of information on reasons they were not commuted. This means that a prisoner is not given the opportunity to understand what has been lacking in his rehabilitation process, thereby denying them the chance to address those issues and become eligible to be commuted in the future. The lack of transparency and accountability that results from decisions of the committee not being subject to appeal will also impact the credibility of the committee and public trust in the integrity of the process. As a condemned prisoner from WCP stated:

⁵⁸⁵ Tokyo Rules 1994, r 9.3

"I explained the truth about my case. I said that I have understood the wrong I have committed and that I am ready to live my life as a good person, without committing any wrong, and asked for a commutation to life but I was not commuted. I respect the decision of the committee and do not regret the fact that I did not get commuted but I am under immense mental stress not knowing why I was not commuted. Because of following reasons, I am greatly aggrieved:

Since the day I was imprisoned, I have not committed any wrongdoings and have lived according to the rules in the prison. Yet, those who had committed offences inside the prison were also commuted.

Even those who were convicted after me, that means those who were convicted after 3 September 2013, were also commuted.

Even when considering the circumstances of the case, I was convicted for murdering a girl for a relationship issue, but those who have raped girls, those who have killed five or six persons by butchering them, those who had trafficked drugs were commuted. My case was a high-profile case, which attracted the attention of print and electronic media and led to public outrage, but so was the XX case, where the accused prisoner was commuted.

I did not even appeal against my sentence. Yet those who have had their sentence affirmed by the Appeal Court and by the Supreme Court have been commuted.

Considering the above-mentioned facts, it is my opinion that given my good behaviour, the sentence spent, the circumstances of the case, the societal impact of the case, that I too am eligible for the commutation. Therefore, I cannot imagine why I was not commuted. I think about this often. Due to this I am under immense mental pressure.

I also think that I have the right to know why I was not commuted but I do not have the means to find out."

In the study sample, 85% of male life prisoners were originally sentenced to death and their sentence was later commuted to life imprisonment. Amongst the male condemned prisoners, 18% stated they were considered by a commutation committee, but did not have their death sentence commuted to life. While 53% of male condemned prisoners said they were not considered by a commutation committee, 12% stated they did not know whether they have been considered or not. This indicates the lack of transparency in the process, whereby the prisoner is not even aware whether his/her case has been presented before the committee. The percentage of those who stated they were not considered by a committee could also be explained by the fact that they may have been on appeal at the time, which disqualifies a person from being eligible to be considered for commutation.

In the sample, 82% of condemned women were not considered by a commutation committee. This is explained by the fact that these women were on appeal at the time the last commutation committee was operating and hence not eligible to be considered by the committee.

The last Commutation Committee for reviewing long-term prisoners completed its first round of commutation recommendations and a group of prisoners were released or had their sentences reduced by the President upon the Committee's recommendations. The Commission observed that in this instance the Commutation Committee's recommendation for each prisoner depended on individual circumstance, instead of a 'one size fits all' approach. For example, some long-term prisoners who proved they had been rehabilitated and pose no risk to society were released from prison, while others had their long-term sentences commuted to either half the initial sentence or to a specific shorter term such as twenty years (considering time already spent in prison). The Commission regards the actions of this Commutation Committee as a positive development.

3. The system of evaluations

Once a death row prisoner's sentence has been commuted to a life sentence and then a normal convicted sentence, s/he become eligible to be assessed under the system of evaluations.

The PO sets out a system of evaluations that assesses and reviews the extent to which a prisoner serving a determinate sentence has been rehabilitated, with a view to early release. The Commission was informed by prison officers at the Prisons Headquarters that the evaluation process is applicable to all convicted prisoners, except condemned and life prisoners, as they serve an indefinite sentence. If a condemned prisoner is commuted to life imprisonment and thereafter commuted to a specific term of imprisonment, s/he will become eligible for evaluations. However, certain prisoners informed the Commission that life prisoners were subject to evaluations prior to the system of evaluations being disbanded, and their evaluations would contribute to the consideration of their sentence being commuted to a specific term of imprisonment.

Section 40 of the PO states that:

'On the completion of the fourth, eighth, twelfth, fifteenth and twentieth years respectively, of the term of imprisonment of every prisoner, irrespective of age, the Superintendent of the prison shall forward to the Commissioner, for the consideration of the Governor-General, a report upon all points having a material bearing on the question of the remission of sentence, including:

- The condition of the prisoner;
- His demeanour;
- His attitude towards his offence and towards crime generally;
- His conduct and industry; and

- His fitness for resuming the responsibilities and normal avocations of citizenship together with a report from the Medical Officer of the prison upon the mental and physical condition of the prisoner, with particular reference to the effect of the imprisonment upon his health.

When a prisoner has served twenty years in prison his case shall be submitted for the consideration of the Governor-General [President] once in every twelve months.'

This system ensured that every convicted prisoner was eligible for evaluations once they completed the first four years in prison. The prisoner would be reviewed with a view to ascertain whether s/he can illustrate that s/he has been rehabilitated by engaging in vocational training and other religious activities inside prison and has shown dedication to self-improvement. Those who have spent four years of their prison sentence are eligible for the first round of evaluations. The next round of evaluations would be conducted at the eight-year mark and thereafter at the twelve-year mark and so on. At each round of evaluations, the prisoner may be considered for early release at that stage, or required to continue their sentence in order to be considered for early release at the next round of evaluations.

The expectation of the system was that a prisoner would be rehabilitated by the time s/he had spent twenty years in prison. Accordingly, "when a prisoner has served twenty years in prison, his case shall be submitted for the consideration of the Governor General [President] once every twelve months".⁵⁸⁶

Due to political, judicial and public opposition the system of evaluations was suspended in 2001. One of the main reasons for the suspension was public opinion that people convicted of crimes and sentenced to death were being released "too early". This is illustrated by the statement a former state official below:

"The evaluation system was a very much abused system. There was no thinking behind it. People who were condemned were coming out of prisons in less than even ten years. Automatically releasing people just because they fell within the technical criteria means you are placing the lives of other people at risk."

Mr. H.G. Dharmadasa, Former CGP⁵⁸⁷

In this regard, Ms. Piyumanthi Pieris, Additional Secretary (Legal), Ministry of Justice stated thus:

"There are certain people who cannot and should not be released from prison. The kinds of crimes they have committed may have had long-term consequences in society. Some crimes may have led to a public outcry.

⁵⁸⁶ SRs 1956, s 40

⁵⁸⁷ Mr. H.G. Dharmadasa was a member of the commutation committee appointed by the Ministry of Justice in October 2013. This Committee was chaired by Justice Nimal Dissanayaka, former Supreme Court Judge.

Releasing a person like that means the seriousness of their crimes is overlooked. In the criminal justice system, there is a meaning behind punishment."

3.1. The procedure used to conduct evaluations

"The best thing is to resume the evaluations system. Even though the evaluations system was suspended in early 2000s, we still send evaluation reports. If people's sentences are commuted from condemned to life, from life to twenty, from twenty to further commutation – we can send these people to [open prison] camps. They will feel better because they don't have to live in places like the Chapel ward, in such horrible conditions. It will be easier on the prison administration. Overcrowding will drastically reduce, and this will greatly reduce the burden on the State."

WCP SP, SSP T.I. Uduwara

The Commission was informed by the DOP Commissioner Rehabilitation that all prisoners who are sentenced for at least eight to ten years are eligible to be considered for the first round of evaluations upon the completion of the first four years of their sentence. The Commission was informed that a prisoner who is sentenced to less than eight years in prison would not be subject to evaluations because upon the completion of the first four years of the sentence, they would become eligible for Home Leave and then potentially early release on license, which is discussed in detail below.

He stated that the evaluations system is currently followed by the prisons, in that every prison submits a report on each prisoner eligible for evaluation, which is prepared by the SM Branch, to the CGP. Following a report from the CGP, which is recorded at the rear of the prisoner's Form 26, the DOP compiles the list of prisoners to be forwarded to the MOJ Secretary along with individual reports. The MOJ then forwards the list to the President who has the authority to make decisions on the remainder of the prisoner's sentence. The DOP is also notified by the MOJ when evaluation reports of prisoners are forwarded to the President. However, presently, the Commission is not aware of any further action taken on this matter by the office of the President.

As part of the assessment process, SM officers are required to complete Prisons Form 26 and Form 99 for each eligible prisoner i.e. every prisoner serving a definite sentence of more than eight to ten years, and who has already served at least four years to be eligible for the first round of commutations. Thereafter, evaluations would take place each time a prisoner completes eight, twelve, fifteen and twenty years, of their sentence. Form 26 outlines the personal details of the inmate and details of their case including, *inter alia*, the case number, name of the judges that sentenced the prisoner, details of their offence, sentence duration, prior convictions and their conduct in prison. Form 99 mentions details of the inmate's personal circumstances, including the marital status, whether they have any children, occupation before conviction, 'general character and mode of life before conviction', etc. This

form also contains questions about the prisoner's proficiency in the trade they followed in prison, and ends with a declaration of no objection from the officer.

A report from a MO must also be attached to the evaluation report. The MO's Report, which is a part of the Form 26, inquires if the prisoner is suffering from any disease or ailment and if 'release is advisable to save his life'. The MO must also mention if imprisonment had an effect, or is likely to have an effect, on his physical and mental condition.

As evident from the forms, the evaluation process is not a comprehensive assessment of the prisoner's conduct during their time in prison, particularly because the SM officers are merely required to complete the form, rather than conduct an evaluation on pre-determined criteria and state a conclusion. This was affirmed by the Commissioner Rehabilitation, who cited the need for an advance assessing mechanism by stating that the current system is based on quantifiable information, eg: a prisoner attended a certain class x number of times; however, there is no qualitative analysis of their performance, conduct and change in behaviour over the years. This indicates that, although the system of evaluations needs to be revived and made fully operational, it must first be revised and updated in accordance with international standards of correctional evaluation mechanisms and officers involved in this process must receive relevant training.

It must also be pointed out that officers of the SM Branch, which is responsible for maintaining order and discipline in the prison and taking action against prisoners who have committed disciplinary offences in prison, may not be best placed to conduct an independent and objective analysis of a prisoner's rehabilitation. While SM officers can be requested to provide a report on the prisoner's disciplinary record during the period of sentence, Rehabilitation Officers must be tasked with undertaking the actual assessment of the prisoner. However, considering the lack of administrative resources with which prisons grapple, as well as the severe human resource inadequacies of the prisons' Welfare Divisions, discussed in detail under Home Leave and License Board, it is presumable that without additional allocation of financial and human resources, prisons will not be able to compile comprehensive evaluation reports for all prisoners, every four years, in an efficient manner.

4. Marks and remissions

Another process which enables early release from prison is the system of marks and remission whereby, depending on their daily productivity and good conduct, prisoners will be awarded a certain number of marks, the accumulation of which would render them eligible for early release from prison. This process is only applied for convicted prisoners who serve determinate sentence periods, and are engaged in some form of work in the prison, which can be quantified as remission marks.

Section 58 of the PO states that a remission of sentence may be earned by industry and good conduct by any prisoner who is undergoing an aggregate sentence of imprisonment

exceeding one calendar month of simple or rigorous imprisonment, and the PO⁵⁸⁸ confers on the Minister the power to make rules on the remission of sentences.

Section 298 of SRs states that the number of days that a prisoner shall pass in prison after the first calendar month of his or her incarceration shall be represented by a certain number of marks. The number of marks a prisoner must earn in order to have a portion of their sentence remitted is calculated by the RC Branch at the commencement of the sentence period. The extent of such remission shall be determined by the number of marks he shall earn in accordance with Sections 300 to 307 of SRs, briefly stated below:

- Section 300 of the SRs states, six marks per day shall be allotted to each prisoner upon the completion of the first calendar month of imprisonment irrespective of his or her conduct or industry. The total number of days in the sentence, less thirty days (calendar month), multiplied by six shall be the number of marks a prisoner must earn before discharge. It must be noted here that the first month of remission marks is not based on good conduct, despite the provision mentioned above which stipulates that remission marks are dependent on the individual's conduct, as is the minimum remission of marks awarded to all offenders. Furthermore, the Commission finds it commendable that prisoners are not awarded remission marks based on good conduct during their first month in prison, as offenders may encounter many difficulties during their first month and require time to settle in to prison life.
- Section 301 states 'a mark earning male prisoner shall receive eight marks, and a female prisoner nine marks per day for steady hard work and the full performance of the task allotted to him or her, provided no marks are forfeited for misconduct and under Sections 304 and 305. Earning at these rates, when the total number of marks to be earned in terms of Section 300 has been reached, the portion of sentence still remaining unexpired shall represent remission earned by the prisoner.'
- Section 302 - The maximum remission of sentence that a prisoner can earn shall be in the case of a male prisoner one-fourth of the period of imprisonment during which he is allowed to earn marks, and, in the case of a female prisoner, one-third of such period.

The prisoner will thus, be awarded a maximum of eight marks per day for good conduct and hard work, and will be eligible for a portion of their sentence to be remitted once the requisite number of marks has been earned. Hence, a prisoner sentenced for ten years, will be required to serve a maximum of 7.4 years in prison if they steadily earn eight marks per day, and the remaining portion of the sentence shall be deducted based on the remission marks awarded for their good conduct and productivity. The maximum remission period that a prisoner may earn is one fourth of the total sentence period. Other applicable rules are as follows:

- Section 303 - No remission shall be allowed for mere good conduct, except on Sunday and other non-working days.

⁵⁸⁸ 94(2)(j) of the PO

- Section 304 - A mark earning prisoner shall receive only six marks per diem for (a) days under punishment and (b) detention in hospital when certified by the Medical Officer to be due to the prisoner's own act, fault, or neglect.
- Section 305 - Male prisoners in the light labour class shall be credited with seven marks, and female prisoners with eight marks, when their detention in that class is certified by the Medical Officer to be due to their own act, fault, or neglect.
- Section 306 (a) – The name of every prisoner with a sentence of imprisonment exceeding one year, who is due for discharge on remission shall be submitted through the Commissioner [CGP] to the Minister, in the case of a male prisoner when he has to earn 480 of the total number of marks required, and in the case of a female prisoner when she has to earn 540 of the total number of marks required.
- Section 306 (b) - In all cases where the sentence of imprisonment exceeds one calendar month but does not exceed one year, the SP can, subject to the approval of the Commissioner General [CGP], discharge such prisoners when they have earned the required remission, with their names being submitted in advance on Form Prisons 15 to the CGP for such approval on the 15th and 30th respectively of each month, provided that in any case where the prior approval of the CGP cannot conveniently be obtained the SP may authorize the discharge of the prisoner and obtain the approval thereafter.
- Section 307 – ‘It shall be clearly understood that the granting of such remission is an act of grace, and that it will be made subject to such conditions as the Minister may direct as to security for good behaviour, forfeiture of remission for misconduct, or appearance at stated periods before the police or headmen.’

It should be noted that Section 259(2) of SRs provides for the restoration of remission marks forfeited in whole or in part in consideration of subsequent meritorious conduct while Section 714 of DSO states this is subject to the recommendation of the SP. Section 9 of SRs states that the CGP shall provide, for the general information of prisoners, a summary or abstract, in printed form, of remission of sentence of prisoners, among other things. However, the Commission did not observe any such notice during the prison visits undertaken.

It must be highlighted that, the current system of calculating remission marks is outdated and does not reflect the current conditions of prisons. For instance, as discussed in the Rehabilitation of Prisoners chapter, industrial work parties may not always contain adequate equipment and supplies for all prisoners assigned to that party to produce the required level of output per day. The Commission specifically observed prisoners at WCP idling in certain party sections since there is not enough equipment for all prisoners to be engaged in labour. The Commission was informed that irrespective of such circumstances, all prisoners will be awarded the maximum number of marks, thus indicating that the calculation of remission marks is a superficial measure of an inmate’s rehabilitation over the years. Remission marks will be awarded to inmates, save for prisoners who have engaged in misconduct during their sentence, for which their remission marks may be deducted.

While the purpose of this system is to allow prisoners the opportunity for early release, the blanket award of marks without meaningful assessment of productivity limits the potential of the system to incentivise good conduct and reform. If the award of maximum remission marks is considered by prisoners to be a blanket rule applicable to all prisoners, even if they do not engage in meaningful activity all day but simply sit idly, prisoners have little motivation to engage in hard work and maintain good behaviour. Further, this adversely impacts the effective functioning of the system of early release based on good conduct.

However, it must also be highlighted that the rehabilitation opportunities for prisoners must also be revamped in order for the remission system to become fully operational. Currently, the rehabilitation programmes and opportunities available for prisoners have limited potential since many of them are outdated and do not increase the opportunity for prisoners to become employable upon release.⁵⁸⁹ Thus, in order to motivate prisoners to earn the maximum number of marks per day, the opportunities available to them must also be enticing and contain the promise of future employment possibilities, develop skills or hone talent. Prison work must be equitably remunerated so that prisoners can opt to participate in employment inside prison instead of rehabilitation programmes to earn the required number of marks per day. For instance, a prisoner must be able to choose to engage in higher studies and earn a sentence remission by pursuing a degree, while another prisoner engages in prison work for a salary and earns remission marks.

Prisoners with disabilities, elderly prisoners, women and other vulnerable groups of prisoners, who may not be able to participate in the conventional rehabilitation activities, must have access to opportunities that are designed for them. This furthers the case for individualisation of rehabilitation, which is tailored to each prisoner's needs and skills, thereby increasing their motivation to rehabilitate during their sentence, in the hope of early release.

5. Home Leave

Home Leave is the final test for prisoners, which they have to successfully complete to be eligible for early release. The objective of the Home Leave process, as outlined in Circular No. 622/1974 titled 'Home Leave', is to provide an opportunity to prisoners to prepare themselves for the challenges they are likely to face when they return to society at the end of their sentence. It further mentions that the Home Leave scheme is a privilege and not a right. SMR 106 states that special attention shall be paid to the maintenance and improvement of relations between a prisoner and his or her family as is desirable in the best interests of both. Home Leave is the most important arrangement in this regard, due to the positive impact it holds in facilitating prospects of early release from prison as well as maintaining family relationships.

⁵⁸⁹ For a detailed discussion of rehabilitation programmes available in prison, please refer chapter Rehabilitation of Prisoners.

Circular No. 622/1974 mentions that prisoners become eligible for Home Leave when they are eligible to be considered for early release on License, i.e. prisoners sentenced for less than thirty years who have completed half their sentence and prisoners sentenced to imprisonment for more than thirty years who have served at least ten years (discussed in detail below). A Circular dated 13 February 1987 titled 'Release upon Licenses and Granting Home Leave' mentions that all prisoners eligible for Home Leave shall be thus sent once every six months. According to Circular No. 05/2012, a prisoner can go on Home Leave for seven days for the first time, ten days for the second time after six months, and again fourteen days for the third time six months after the second home visit, after receiving the approval of the Headquarters. Thereafter, the prisoner may be eligible to be released on license discussed in detail below. According to Circular No. 08/2018, prisoners who are found guilty of use or possession of contraband, such as mobile phones, SIM cards, chargers, headsets/hands-free narcotics (heroin, hashish, cannabis, opium) that are prohibited inside the prison, are deprived of the chance of going on Home Leave for two years from the day they are found guilty.

5.1. Home Leave evaluation process

The Welfare Branch usually oversees the Home Leave process. If a prisoner is eligible to go on Home Leave, Rehabilitation Officers would conduct both a preliminary inquiry and a field visit. A field visit involves a Rehabilitation Officer visiting the home town of a prisoner and speaking to their family and community, to determine whether the community is receptive to the prisoners' return, and particularly if a victim in the prisoner's case is residing in the same area and their opinions on the release. Thereafter, a report on the field visit and a preliminary report on the prisoner's conduct during their time in prison will be compiled by the Rehabilitation Officer. If both reports are satisfactory, the officer will forward the names of those eligible to the Home Leave Committee of the prison, which will evaluate the eligibility of the prisoners recommended by the Rehabilitation Officer and prepare a list of names to be sent to the Prison Headquarters for their Home Leave to be approved.

According to Circular No. 26/2011, the SP is the Chairman of the Home Leave Committee of the prison, while the CJ, Senior Welfare Officer, Disciplinary Jailor, Vocational Instructor, a member of the Local Visiting Committee are members. If any Welfare Officer has undertaken the field visit, he shall be refrained from attending the meeting, but is required to answer questions related to the field visit, should the need arise.

As revealed during an interview with the officers of the Rehabilitation Division of DOP, the Rehabilitation Officers in prisons send all relevant documents of prisoners to be sent on Home Leave to the DOP, once the prison committee compiles the list of eligible prisoners. The Rehabilitation Officers in the DOP ensure that all documents are in order before sending them to the K Branch, who then forwards them to the MOJ. Once the list is approved by the MOJ, prisoners can go on Home Leave.

The Commission observed notices with the list of prisoners who were selected to go on Home Leave displayed in prisons for prisoners to see, as required by Circular No. 27/2017 in general, and specifically mandated by Circular No. 05/2012, which requires all documents on the recommendations of Home Leave to be displayed on the notice boards of all prisons for seven days. It also requires any objection or complaints about decisions to be reported to the CGP.

5.2. Shortcomings identified in the Home Leave process

Lack of standardised social reports

A shortcoming in the Home Leave process is the absence of standardised formats for Rehabilitation Officers to prepare reports on every prisoner who is eligible to go on Home Leave, which was a concern expressed by the Additional Secretary (Legal) of MOJ. It was observed that the quality of the report depended on the effort of the individual Rehabilitation Officers [Annex 18.1.]. This is cause for concern since Home Leave reports affect the prisoner's prospects at the License Board too. It has been identified as problematic by the DOP as well; Circular No. 31/2015 requires social reports prepared by Rehabilitation Officers to be of proper quality, according to the instructions set out in prior Circulars, including Circular No. 16/2016 (which is discussed below in the section License Board), and in accordance with the training given to the Rehabilitation Officers. It further states that if there are any errors, they should be corrected under the guidance of the Senior Rehabilitation Officer and the Chief Rehabilitation Officers, and if reports without errors have to be prepared by going to the field again, Rehabilitation Officer must do so voluntarily.

Delays in the process

Another problem with Home Leave is the inherent delays in the process. The Commission received numerous complaints from prisoners regarding the long periods of time it took for their Home Leave to be approved, which delayed the prospect of their early release on license as well. Delays occur on the part of the prison and on the part of the Headquarters/MOJ as well. To rectify the delays on the part of the prison, Circular No. 12/2016 which sets out the following rules, was issued:

1. A calendar should be created and maintained to track the eligibility date for license and Home Leave for prisoners with a definite sentence at the commencement of their sentence. The calendar shall be updated accordingly.
2. After obtaining Home Leave, the next Home Leave opportunity shall be entered in the calendar and it shall be handed over to the respective Rehabilitation Officers in charge of the institution.
3. This calendar shall be maintained by the RC Jailer and shall be subjected to the supervision of the CJ and the SP.

4. The list of names of prisoners who have qualified to obtain their first Home Leave shall be submitted in writing to the Rehabilitation Officers of the institution to act according to the Circulars before six months of such date of qualification. A copy of the list shall be presented to the Commissioner of Prisons – Rehabilitation.
5. After the first occasion of qualifying for Home Leave, before fourteen days to the next date when they would qualify for Home Leave, the list of names of such prisoners shall be given to the Rehabilitation Officer in writing. Although the circular mentions fourteen days, the Commission was informed that Rehabilitation Officers begin the process of reevaluating an individual for the second Home Leave around one month before the date on which they would qualify for Home Leave due to the delays inherent in the process of assessing a prisoner. Within fourteen days from the date on which they qualify for the next Home Leave, the recommendations of the Home Leave Board shall be sent to the Prison Headquarters to be sent for the approval of the Ministry. The prisoner is reassessed in order to qualify for the second round of Home Leave, and the prisoner's conduct during the first Home Leave, the impact of it and the response of the community to the prisoner's return is evaluated during this process.
6. Where Home Leave Board recommendations are not sent within fourteen days from the date the prisoner is eligible to go on Home Leave, reasons for the delay shall be sent with the recommendations separately. If there had been any delay on the part of the officers, actions taken to address the delay shall also be mentioned.

It is further stated that SPs and ASPs of the institutions shall take responsibility for not working according to the aforementioned guidelines. However, the Commission observed that the delays on the part of the prison persist, especially in initiating the process six months prior to the date the prisoner becomes eligible to go on Home Leave, as mentioned in rule four above. This non-adherence has resulted in eligible prisoners waiting for months to go on their first Home Leave. The procedures that are in place to hold the officers who delay the process accountable are not used. Delays on the part of the Headquarters and the MOJ were often found to be administrative. For example, during the prison visits undertaken, many prisoners mentioned to the Commission that the approval of their Home Leave had not been sent by the Ministry to the prison, even after months, due to the change of Ministers that took place in August 2017 and then again in October 2018.

Lack of transparency

When the Commission inquired whether the K Branch or MOJ can omit names from the Home Leave list prepared by the prison, the Commission was informed that previous Commissioners of Operations would often reject certain files, for even arbitrary reasons, although that no longer happens. However, the fact that such decisions can be taken without providing a justification and will not be subject to review, indicate the existence of a gap in checks and balances to avoid arbitrary decision making and transparency, which could risk the early release of prisoners as it depends on the professional integrity and impartiality of the Commissioner at the time.

Requirement of family support and guardianship

Another issue with the Home Leave process is that it greatly depends on the family background of the prisoner, which might be beyond their control and is not a determinant of whether the prisoner has been rehabilitated. For instance, a prisoner with exemplary conduct would not be able to go on Home Leave if feedback from their family is not considered satisfactory, or if they refuse to accept the prisoner into their home, or if the prisoner has no family. The importance of this factor was highlighted to the Commission by Rehabilitation Officers, since whether a prisoner is successful in obtaining Home Leave is highly dependent on whether an inmate has a home to return and family members to monitor them. As a convicted prisoner from AOPC described it:

“I have told my family not to come here, because the journey is too long but recently, I was told that when my family does not visit me it affects my Home Leave. That is, they can think that there aren’t any blood relations and all and because of that I told them to come and visit me. Then they said they will come next week.”

Circular No. 05/2012 requires necessary steps to be taken to call for the nearest kin of the prisoner or if not the guardian to provide custody during future Home Leave. It was revealed to the Commission by officers from the DOP that foreign nationals face no barrier to being sent on Home Leave, except that they usually do not have a home or family members in Sri Lanka. However, a few years ago an embassy had reportedly agreed to be the guardian for the inmate who was a citizen of their country, and hence this individual was able to go on Home Leave.

Table 18.2- Statistics on prisoners sent on Home Leave from 2007 to 2018⁵⁹⁰

Year	No. Sent on Home Leave			No. Violated the terms of home leave ⁵⁹¹		
	Male	Female	Total	Male	Female	Total
2007	537	10	547	14		14
2008	602	6	608	10		10
2009	755	25	780	25		25
2010	618	14	632	21		21
2011	358	4	362	11		11
2012	175	6	181	6		6
2013	492	6	498	18		18
2014	469	8	477	19		19
2015	757	17	774	14	2	16

⁵⁹⁰ Prison Statistics of Sri Lanka – 2018, Vol. 38 – 2019, page 69

⁵⁹¹ Violating the terms of home leave would include not reporting back to the prison on time after the home leave concludes.

2016	578	11	589	24		24
2017	502	4	506	9		9
2018	378	-	378	13	-	13

As illustrated by the statistics, violations of Home Leave conditions are minimal, which indicates that this is a useful measure to reward inmates for good behaviour and also to assess whether prisoners may be eligible for early release. The fact that inmates may not have a home to return or an accepting family to receive them should not be an impediment to this process. Instead, the Ministry could introduce halfway houses for prisoners to reside in for the duration of their Home Leave under minimal supervision to enable them to fulfil the objectives of Home Leave, and improve their chances of being released on License Board.

6. License Board

The system of License Board is the final step for a prisoner to successfully complete in order to be released early from prison.

According to Section 11 of the Prevention of Crimes Ordinance No. 02 of 1926, the Minister, by an Order in writing, has the power to grant to any prisoner undergoing a sentence of imprisonment or preventive detention in any prison in Sri Lanka a licence to be released for a portion of his period of imprisonment upon such conditions as the Minister deems fit.⁵⁹²

Prisoners who have returned to prison from their first Home Leave on the prescribed date and time, without committing any misdemeanours during that period are eligible to be produced before the License Board to be evaluated for early release from prison. A prisoner is required to have successfully completed at least one Home Leave visit in order to qualify to be produced before the License Board, but some prisoners may be asked to complete more than one visit. Successful prisoners at the License Board would be released from prison, subject to certain conditions that must be followed. Conditions for release primarily include, but are not limited to, regularly reporting to the nearest police station in their home town.

Eligibility criteria

According to Circular No. 27/2017, prisoners to be released on license should be selected in accordance with the following conditions:

1. They should have been in prison (served their sentence) for two years or more since date of their sentence.

⁵⁹² Prevention of Crimes Ordinance No. 02 of 1926, ss 12, 17, further provisions with regard to releasing prisoners on license.

2. For prisoners who are sentenced for less than thirty years the date to be eligible to be released on license should be the date they complete half of their sentence, after calculating general remission.
3. Prisoners who are sentenced for thirty or more years should have served ten years for them to be eligible to be released on license.
4. The release of those who are sentenced for rape and child abuse on license should be done after seriously considering the triviality or gravity of the offence according to their past conduct, the factors that compelled them to commit the offence, the current state of the aggrieved party and the attitude of the prisoner.
5. Of the drug offenders, only those who are sentenced for cannabis, opium and illicit alcohol should be released on license, and those who are imprisoned for heroin, hashish and other drugs should not be released under license.
6. Reoffenders who had been released on license before are not eligible to be produced before the License Board again.

It should be noted that Circular No. 15/2013 issued in 2013 placed certain restrictions in relation to persons convicted for sexual offences, due to protests from society against the early release of such persons, but Circular No. 15/2013 has not been rescinded. This indicates that a prisoner's eligibility for release also takes into account external factors, such as the response and reaction of the society, and is not solely based on the level of rehabilitation of the prisoner and their conduct over the years. However, currently, under Circular 27/2017(condition #4), sex offenders can be released after carefully considering a number of factors.

Processing of License Board applications

Circular No. 24/2013 states that it is a duty of the Welfare Officers to implement the License Board process under Section 11 of the Prevention of Crimes Ordinance and under which they are required to:

- I. Compile the Preliminary Interview Reports of all prisoners who are qualified to be released on license.
- II. Compile Field Inquiry Reports of prisoners. They are required to be very meticulous in this task, and when conducting the field inquiry must endeavour to meet families of prisoners and the Grama Niladhari. Collecting precise information from well-known people in the area and other sources is also required.
- III. Submit Social Reports of all qualified prisoners to the License Board on time.

- IV. The administration of prisoners released on license is the duty of the Welfare Officer while the supervision of such prisoners is the duty of those that are ranked higher than Welfare Officers.
- V. Act according to the orders of the aforementioned Ordinance, in situations where licenses have been revoked.
- VI. Send prisoners qualified under the licensing scheme on Home Leave accordingly.
- VII. Administer license holders.

According to Circular No. 27/2017, the RC Branch should prepare a list of prisoners who would be eligible to be released on license prior to six months of such eligibility and a copy should be given to the Rehabilitation Branch and the original should be sent to the Secretary of the License Board. The RC Branch should display a copy of such list for the information of the prisoners.

Reports and documentation

Circular No. 16/2014 titled ‘Releasing Prisoners on License’ together with circular No. 26/2011 provides for four types of reports to be compiled with regard to the License Board process:

- i. Preliminary interview report by the Rehabilitation Officer

The preliminary interview report contains basic details of the prisoner, full name, NIC number, permanent address, Grama Niladhari Division etc. A statement from the License Board candidate is added to the report, as are the details of the prisoner’s family relationships and details and circumstances of the crime committed. The recommendation of the Rehabilitation Officer from the prison in which the inmate is held regarding the eligibility of the prisoner for early release is contained in this report.

- ii. Field report

The Rehabilitation Officer from the prison in the area of a prisoner’s home town must undertake a field inquiry to discover the willingness of the inmate’s family and community to accept the prisoner. The response of and reception by the prisoner’s family and community during Home Leave is included in the field report, as are the observations of the rehabilitation officer who conducted a field visit. The field report also contains information acquired during interviews with members of the prisoner’s family and community, including local religious leaders, as well the recommendation of the Rehabilitation Officer who conducted the field visit.

The WCP RC jailor and the Rehabilitation Officer stated that in cases of sexual violence the Rehabilitation Officers would contact the relevant victim only if necessary, for instance, if the victim resides in the area to which the prisoner will be returning. If there is no objective

reason to consult the victim, then they may not be contacted in order to prevent causing distress or disturbance to the victim and their family. The Commission was also informed that in the case where prisoners are considered to have been rehabilitated in prison, the officers would even make a case for the prisoner before the victim. In most cases, however, when social reports are obtained from victims of sexual offences, they do not contain positive feedback on the prisoner in question since the community may be unwilling to accept them. As RC Jailor in WCP stated:

“If we send the names of fifty people, perhaps only five are actually eligible for home leave when all the documentation is put in order. For example, prisoners convicted for offences like rape and child sexual abuse – they don’t get to go on home leave, because their social reports come back negative.”

While the importance of consulting the victim of the crime cannot be understated, especially when a prisoner would be returning to the same community, where a prisoner is genuinely considered to be rehabilitated, they will not be able to benefit from early release mechanisms due to factors outside their control.

iii. Authorization report by Prison License Board Committee

According to Circular No. 26/2011, the Chairman of the prison License Board Committee is the SP of the prison, while the CJ, Senior Welfare Officer, Disciplinary Jailor, Vocational Instructor, a member of the Visitor’s Board are members. The Committee is required to provide their recommendations on the eligibility of the prisoner for early release and provide a summary of the prisoner’s character, conduct and participation in rehabilitation programmes during the term of imprisonment.

iv. Summary Report

The summary of the report is prepared by the License Board Secretary, a post currently occupied by the SP of Rehabilitation at the DOP, who provides his recommendations and observances on the prisoner’s rehabilitation. This report must include the offence of the prisoner as well as the sentence awarded, and the resultant reduction in the sentence after remission is calculated in extensive detail.

v. Other reports

Other reports that may be included is a medical report, a Home Leave report which outlines any violations of the Home Leave conditions and lack thereof, as well as a report from a Senior Rehabilitation Officer. There are fourteen Senior Rehabilitation Officers in the prison system; if a prison does not have a Senior Rehabilitation Officer as part of their staff, the file is sent to the Senior RO of the nearest prison. Certificates outlining the prisoners’ vocational training qualification acquired during imprisonment, and other certificates to prove their participation in rehabilitation programmes are included.

Circular dated 16 September 1987, titled 'Presenting Social Reports Files to the Licensing Board' mandates the SPs to submit a certificate of prior offences from the Finger Print Registrar to the Secretary of the License Board for details of the inmate's past offences to be presented at the License Board meeting. It is required to be explained to the prisoner that in any case of discovery of untrue statements made by the prisoner regarding his prior sentences, the license granted to him shall be suspended and disciplinary action shall be taken.

The elaborate process to determine an individual's suitability for release indicates that the decision for early release is taken very seriously and all steps must be complete before the License Board can deliberate on an individual's application. This is the reason the rate of successful applications for early release is quite low. The officers of the DOP Rehabilitation Division informed the Commission that of one hundred eligible prisoners, only five prisoners may be granted early release, as prisoners may be rejected at various points in the procedure. They also stated that the rate of recidivism among prisoners released on license is extremely low and violations of Home Leave and License Board conditions are rare.

License Board training

The Commission was informed that, as per Circular 41/2013, prisoners from all over the country who are to be presented before the License Board are brought to WCP ten days before their interview. During these ten days, the prisoners participate in group counselling sessions where they share stories and experiences of prison and discuss what they will do when they are released, and participate in self-reflection and personal development activities.

Evaluation process

The list of prisoners selected by the prison License Board Committee to be suitable for early release on license is sent to the License Board at the Headquarters which comprises of the CGP, Commissioner of Prisons – Welfare, Prison Doctor (WCP PH), MOJ Representative and a Police Representative (usually the Head of the Crimes Branch – SSP), as mentioned by the MOJ Additional Secretary (Legal).

The prisoners are interviewed by the License Board to confirm the information in their reports. The character of the prisoner, age, physical and mental state, nature of the wrongful act, reasons for committing the wrongful act, the social environment of the prisoner before they were imprisoned, conduct during the rehabilitation programme, attitude of the society [towards him] and the likely impact of his release on society are said to be taken into consideration when issuing the license for release. The prisoner's conduct during the Home Leave period, the acceptance of the family, whether the prisoner engaged in any activity that posed a threat to the community while they were on Home Leave, and how he was received by the community during the Home Leave period etc. will be examined.

It must also be pointed out that the evaluation process largely focuses on extrinsic factors, which *prima facie* indicate rehabilitation, such as engagement in activities, leadership

positions acquired, etc. Prisoners who are introverted by nature and struggle to freely engage in social activities may be at a disadvantage since their level of rehabilitation cannot be effectively assessed by the existing methods. There is a need for psychiatric evaluation to play an integral role in the decision to release prisoners on license, in order to gain a deeper insight into the prisoner's state of mind and level of remorse, rather than only focusing on the activities they participated in during their sentence. The Commissioner of Prisons – Rehabilitation also stated to the Commission that it is important to conduct a psychiatric evaluation of every prisoner upon admission to prison, so that the results of the evaluation can be compared to the results of a psychiatric evaluation before their release. Prisoners with sociopathic tendencies who are not fit for early release would be able to mask their ineligibility by demonstrating engagement in activity, whereby the actual state of their mind and level of remorse may be overlooked.

According to the Additional Secretary (Legal) of the MOJ, about thirty prisoners are released on license per month. She mentioned that a prisoner will be rejected if the License Board is not satisfied that the prisoner will not commit a crime again upon release; however, rejection does not mean that the avenue is closed for the prisoner forever, as he should be periodically presented before the License Board.

Shortcomings of the License Board process

When the prisoner does not have a family/guardian willing to accommodate them the DOP cannot allow the prisoner to go on Home Leave as a supportive family environment and a welcoming community are considered to be integral elements required for the successful completion of this process. Lacking these elements will therefore also adversely impact the ability to be released on license. In such instances, the Rehabilitation Division of the DOP has found other means to enable persons to secure release via license. For instance, two prisoners who did not have guardianship or family ties were released on license in 2018 because the Prisoner Welfare Committee arranged employment and a place to stay for both individuals. Thus, it can be understood that despite the limitations of prison rehabilitation, the officers tasked with rehabilitating prisoners attempt to do their best under difficult circumstances.

When the Home Leave process is delayed it will delay the License Board process. In addition, the License Board process is delayed sometimes due to SPs not paying enough attention to expediting the process and sometimes due to administrative delays in communication on the part of the DOP and the MOJ. The procedures in place to prevent delays on the part of the prison are not adhered to, and there is no procedure to prevent delays on the part of the Headquarters and MOJ. Circular No. 27/2017 states that Rehabilitation Officers should give priority to their work on License Board procedures and the SPs should ensure that the social reports are submitted to the License Board on time and reasons should be given for delayed social reports. Despite such measures being introduced to curb the delays in the process and hold officers accountable for delays, prisoners complained about having to wait for many months to hear the result of their applications.

Circular No.16/2014, titled ‘Releasing Prisoners on License” points out the unsatisfactory state of the Social Reports filed by the Rehabilitation Officers and highlights carelessness, the provision of false information and reporting inaccurate information without conducting field visits. It requires Rehabilitation Officers to include a clear report in relation to the impact of the prisoner’s early release on the victim of the offence. It further states that Rehabilitation Officials should take strict measures to send the Social Reports prepared by them cleanly, clearly and correctly with utmost care. However, MOJ Additional Secretary (Legal) mentioned that the unsatisfactory state of Social Reports persists as holding officers who produce unsatisfactory reports accountable is the responsibility of the SP, which depends on the will and the efficiency of each SP. The unsatisfactory state of Social Reports adversely affects the prisoners as it leads to further delays. To address this problem, the Commission was informed that in March 2019 a programme was conducted to train Rehabilitation Officers on preparing standardised reports in an efficient manner.

It must be restated that most prisons function with a minimal number of Rehabilitation Officers⁵⁹³, who have to complete every step of the procedure themselves, from report preparation to field visits, without any support staff, along with their other functions within the prison. The shortage of resources, particularly in the number of trained Rehabilitation Officers for each prison, therefore adversely affects the correctional objective of incarceration and contributes to the inefficiencies in the License Board procedure. A senior officer at NMRP mentioned, “I’d actually say there is no rehabilitation at all in a prison like this. Like I said, you throw in 1800 people here in the worst imaginable conditions and send three Rehabilitation Officers. What do you expect?”

Lack of transparency

The official commentary for Tokyo Rule 9, which highlights the use of early release measures, iterates the importance of providing a clear evaluation criterion when assessing prisoners: ‘By setting out clear criteria, abuses of discretionary power can be reduced to a minimum and prisoners can work towards release knowing what criteria they will need to satisfy. An additional advantage of clear criteria is that measures of early release will be easier to explain to the general public, who may be suspicious of such measures.’

A shortcoming identified by the Commission with regard to the current process is that there is no written and published policy document or guideline the License Board uses when making decisions on who should be released on license. The License Board does not have a standardised policy in place, which would guide them in making the decision and also guide future License Boards in making an objective decision on the same criteria. Assistant Secretary of MOJ mentioned that even though there is no published policy or guideline, the members of the License Board would often formulate a guideline for their benefit to gauge whether a person would commit a crime after being released or not. These guidelines are not published and are used only by that particular License Board. The lack of objective standards is cause for grave concern as there is no transparency or accountability in the

⁵⁹³ For the ratio of prisoners to Rehabilitation Officers, across all sample institutions, please refer chapter Challenges faced by the Prison Administration.

process that decides a prisoner's early release, and no means to ensure that personal biases of Board members do not influence the decision.

The transparency of the process is further restricted when, as Additional Secretary to the MOJ mentioned, no reasons are provided to the prisoner whose application was rejected-instead the prisoner will only be told to go on home leave again or reapply to the license board after some time. The Commission was informed that even the Rehabilitation Officer who compiled the prisoner's report would not be informed of the reasons for rejection. Further, the Additional Secretary (legal) mentioned that there is no process to appeal the decision for rejected prisoners. It should be noted that Circular No. 27/2017 states otherwise as it says the list of released prisoners should be displayed for the rejected prisoners to appeal.

The composition of the License Board has room for improvement and expansion, as currently there is no one that represents the interests of the prisoners. Technically, all Board members: The Prison Doctor (WCP PH), CGP, MOJ Representative, Police Representative (usually the Head of the Crimes Branch – SSP), Commissioner of Prisons – Welfare, are part of the criminal justice system that incarcerated the person. Hence, the inclusion of human rights lawyers/expert psychiatrists would strengthen the integrity and transparency of the process.

Female prisoners at a disadvantage

The Commission also observed that female prisoners are at a distinctive disadvantage in the License Board process. This is because there is only a limited number of leadership and other rehabilitative opportunities available for female prisoners, and the License Board takes special note of the number of rehabilitative programmes in which a prisoner has participated when deciding whether to release a prisoner on license. Since the assessment criteria utilised by the License Board is not stipulated in a public document, it cannot be determined whether the lack of rehabilitative opportunities available for women impacts upon the evaluation process. This highlights the need to introduce more rehabilitation programmes for female prisoners so they may be able to present a stronger case before the License Board.

Follow up programme

According to Circular No. 31/2015, titled 'Field Areas and Field Duties of Rehabilitation Officers', progress reports prepared about licensees should be sent along with observations and notes of Senior Rehabilitation Officers before the 10th of every quarterly to the Commissioner of Prisons - Rehabilitation.

Table 18.3- Statistics on prisoners released on license from 2007 to 2018⁵⁹⁴

Year	No. of released			No. whose license were revoked for violation of conditions		
	Male	Female	Total	Male	Female	Total
2007	206	2	208	10		10
2008	354	2	356	28		28
2009	379	8	387	37		37
2010	275	9	284	25	1	26
2011	70	3	73	24	1	25
2012	125	5	130	8		8
2013	166	7	173	6	1	7
2014	188	2	190			
2015	158	10	168			
2016	223	7	230	2		2
2017	230	2	232	1		1
2018	164	3	167	3	-	1

As highlighted above, the number of licenses revoked for a violation of conditions is few, and fewer in women, thus indicating the success rate of early release as the culmination of the rehabilitation process in prison. The detailed process to evaluate a prisoner's suitability for release on license demonstrates the care taken by the DOP to ensure only the most suitable persons are recommended to the License Board.

The Commission was also able to witness in July 2019 Rehabilitation Officers from the DOP conducting a programme at WCP, where prisoners were allowed to report their grievances with regards to the Home Leave and License Board procedures. The Commission was informed that a team of officers would be sent to PCP, ACP and MCP as well – the prisons with the largest convicted prisoner population- to allow those prisoners to express their grievances, thus indicating that, despite limitations, the DOP is committed to actualising the objectives of the early release and rehabilitation programmes conducted in prison.

7. Other early release measures

The following opportunities for early release are available to all prisoners who fit the predetermined criteria. These measures operate outside the rehabilitation process outlined above, without rehabilitation forming the crux of the assessment, unlike the early release measures described above.

⁵⁹⁴ Prison Statistics of Sri Lanka – 2018, Vol. 38 – 2019, page 69

7.1. Pardons

Special presidential pardons

Article 6(4) of ICCPR states that anyone sentenced to death shall have the right to seek a pardon or to have the sentence commuted, and that a general pardon, special pardon or commutation of the sentence shall be granted in all cases.

While prisoners themselves or others on their behalf can appeal to the President, as per the current legal provisions, the President has the sole discretion whether to pardon or not as provided by the Constitution. This also includes the power to remit or commute prisoners. This is applicable to all offences and crimes, and to all categories of prisoners. When pardoning a condemned prisoner by way of special pardons, according to the provisions of the Constitution, the President must request the trial judge for a report and forward that report to the Attorney General with instructions. Thereafter, the Attorney General's advice is sent to the Minister along with the trial judge's report, which is then forwarded to the President including the Minister's recommendations. The decision of the President is then communicated to the Minister who implements the decision of special pardon. However, whether this process is followed in practice was not ascertained during the course of the study.

Special pardons are used by the President to commute sentences or to release prisoners, based on a wide executive discretion. The President pardons a prisoner or a set of prisoners due to special reasons. For example, a mother of a prisoner may write to the President asking for a compassionate release of her son. If the President so decides he may grant a special pardon to the prisoner to be released. This is different from general pardons, discussed below, for which a group of prisoners would be eligible due to certain specified criteria.

With special pardons, the President may pardon a prisoner by commuting him/her or by entirely releasing him from prison. Examples of special pardons awarded by the President include where: condemned prisoners were directly commuted to a specific term of twenty years due to requests from family members and Members of Parliament, a condemned prisoner was commuted to life imprisonment, a condemned prisoner was commuted to life first and released on a general pardon,⁵⁹⁵ and a condemned prisoner was released directly from prison. In another instance, five Indian fishermen sentenced to death for charges of heroin trafficking were pardoned by the President and were released from prison on 19 November 2014.⁵⁹⁶

⁵⁹⁵ Refer to General Pardons

⁵⁹⁶ Chaminda Perera, 'Presidential Pardon for Indian Fishermen', *Daily News* (20 November 2014) as published in the Ministry of Foreign Affairs <www.mfa.gov.lk/presidential-pardon-for-indian-fishermen/> accessed 26 December 2018

As of October 2018, three convicted prisoners have been pardoned by the President by way of special pardons since 2015.⁵⁹⁷

Shortcomings of special pardons

Article 6(4) of ICCPR states that anyone sentenced to death shall have the right to seek a pardon or to have the sentence commuted, and that a general pardon, special pardon or commutation of the sentence shall be granted in all cases.

While prisoners themselves or others on their behalf can appeal to the President, as per the current legal provisions, the President has the sole discretion whether to pardon or not as provided by Article 34 of the Constitution. This also includes the power to remit or commute prisoners and is applicable to all offences and crimes, and to all categories of prisoners. When pardoning a condemned prisoner by way of special pardons, according to the provisions of the Constitution, the President must request the trial judge for a report and forward that report to the Attorney General with instructions. Thereafter, the Attorney General's advice is sent to the Minister along with the trial judge's report, which is then forwarded to the President including the Minister's recommendations. The decision of the President is then communicated to the Minister who implements the decision of special pardon. However, whether this process is followed in practice was not ascertained during the course of the study.

In this regard it would be useful to study the mechanism of "Mercy Petitions", the Indian equivalent of Special Pardons as set out below.

- One can file a mercy petition to the President or the Governor of the State in relation to any offence, once all other legal remedies of appeal are exhausted. In practice however, mercy petitions are entertained only for prisoners on death row.
- The petition is then sent to the Ministry of Home Affairs in the central government.
- The Home Ministry in collaboration with the State government discusses the petition and sends the recommendations to the President.
- The President may accept the request for mercy or reject the petition.
- The website of the President demonstrates pending mercy petitions and petitions where a decision was reached, including the decision that was made. Thus, the petitioner has the ability to know the stage at which the petition is.

Most importantly, unlike in Sri Lanka, the Indian Supreme Court has the power to exercise judicial review over the decisions of the executive with regards to mercy petitions, as held in 1980 in the case of *Maru Ram v Union of India* and upheld in *Dhananjay Chatterjee alias Dhana v State of West Bengal, Swaran Singh v State of U.P, K.M. Nanavati v State of Bombay*.

⁵⁹⁷ Parliamentary Deb 9 October 2018, vol 263 – No. 9, col 1005 First Presidential pardon – Field Marshall Sarath Fonseka; Second Presidential pardon – young woman convicted of defacing the Sigiriya rock; Third Presidential pardon – a man convicted of attempted murder (under the PTA) of the pardoning Executive when the Executive was a former Cabinet Minister

The Indian Supreme Court in these decisions held that the pardoning powers of the executive is administrative and an act of grace, and cannot be claimed as a matter of right. However, the Supreme Court reiterated that the Court has the authority and the obligation to review whether the executive has exercised the administrative powers in an arbitrary manner. Thus, the jurisprudence resulted in the Supreme Court landmark judgment of *Epuru Sudhakar & Anr v Govt. Of A.P. & Ors* in 2006, which set out the grounds for challenging decision of the President in accepting or rejecting a mercy petition, as follows:

- The order has been passed without application of mind
- The order is mala fide
- The order has been passed on extraneous or wholly irrelevant considerations
- Relevant material has been kept out of consideration
- The order suffers from arbitrariness

In 2014, the Indian Supreme Court commuted the death sentence of fifteen prisoners, whose mercy petitions were rejected by the President.⁵⁹⁸ The Indian Supreme Court held that the undue delay by the President in reviewing the mercy petitions, which led to (and the “psychotic conditions developed”) psychological distress during incarceration, warranted a commutation of sentence. It must be noted that the Indian Supreme Court in this judgment recognizes the death row phenomenon⁵⁹⁹ even though the Court does not refer to it by name. After the judgment was declared, retired Justice Krishna Iyer, who throughout his time on the bench voiced his strong objection to capital punishment, wrote to Justice Shiva Kirti Singh the president of the bench that considered the case:

‘They suffered torture and agony with a pending death sentence ... Years passed and their plea was pending before the President. A Bench of the Supreme Court which you were presiding appreciated the unbearable agony of a death sentence pending against them.’⁶⁰⁰

Justice Iyer further appreciated the humane concern shown by the bench for the suffering of those on death row, terming it ‘a remarkable display of judicial compassion’ and further stated:

‘Your concern for the distress of the victims of death sentence was justice and mercy. Here for the first time the suffering of the [convicts facing the] death sentences moved the heart of the court and it found these years of delay as an agony sufficient to commute death sentence into life imprisonment...stock of mercy was a rare expression of clemency jurisdiction.’

⁵⁹⁸ *Shatrughan Chauhan & Anr. v Union Of India & Ors.* [2014] Insc 44 (21 January 2014)

⁵⁹⁹ For a detailed discussion, please refer chapter Prisoners on Death Row.

⁶⁰⁰ “Krishna Iyer lauds order on death sentence” *The Hindu* (1 Feb 2014) <<https://www.thehindu.com/news/national/krishna-iyer-lauds-order-on-death-sentence/article5640114.ece>> accessed 1 January 2019

Sri Lanka could adopt similar system that provides for judicial review, which in turn would reduce the arbitrary application of special pardons, make the process more transparent and allow the executive to be held answerable.

General pardons⁶⁰¹

Unlike special pardons, which are granted to a specific prisoner or prisoners at the discretion of the President, general pardons are awarded to a larger group of prisoners who are found to be eligible, based on pre-determined criteria. These are generally awarded to mark religious days, public holidays and other days of importance, including Vesak Poya day, Poson Poya day, Christmas day, Deepavali, Independence Day, Women's Day, Prisoners' Day, to celebrate the day of the Dalada Perahera or to celebrate the day of the Pope's visit to Sri Lanka.⁶⁰² These general pardons are considered to be privileges and not rights or entitlements.

General pardons may include a combination of remission points awarded, commutation of sentences and release from prison, as set out by the examples below. However, this is subject to conditions.^{603,604} For example, prisoners convicted for certain crimes which are considered to be grave crimes are not eligible.

Example 01

The general pardon awarded in 2017 for Christmas day set out the following criteria:⁶⁰⁵

1. Seven days remission [for every year and part of a year spent in prison] for those who have been convicted by 25 December 2017.
2. Cancellation of the remainder of the sentences of those who were imprisoned by 25 December 2017 for not being able to pay a fine.⁶⁰⁶

⁶⁰¹ The Ministry of Justice and the Department of Prisons refer to these as General Amnesties

⁶⁰² See n 43

⁶⁰³ Prison sentences arising from crimes and offences considered to be Grave Crimes are not granted any general pardons.

⁶⁰⁴ Sentences imposed by the Prisons Tribunal are not eligible for general pardons. For a detailed discussion on Prison Tribunals, please refer chapter Discipline and Punishment.

⁶⁰⁵ Department of Prisons, Circular No 26/2017

⁶⁰⁶ Cancellation leads to a release from the prison, provided that the prisoner does not have any other outstanding sentences not covered by this particular general pardon. For example, a person may be convicted for two different cases of house breaking and entering and traffic violation. The person may be given a five years sentence for house breaking and entering and ordered a Rs. 25,000 fine for the traffic violation and in non-payment of the fine a six month imprisonment is imposed for the traffic violation. According to the conditions of this general pardon, the prisoner's punishment in lieu of the fine is cancelled, but the sentence for the charge of house breaking and entering is exempted from the general pardon as it is considered to be a 'grave crime'. Refer to the list of Grave Crimes below. On the other hand, if a person is convicted for one case, i.e. for a charge of a traffic violation and given a Rs. 25,000 fine and in lieu of non-payment is sentenced to prison for six months, he would be eligible for release, according to this general pardon.

3. Cancellation of the remainder of the sentences of the convicted who are older than seventy years and have served a minimum of ten years.

Example 02

The general pardon awarded in celebrating the International Women's Day on 08 March 2018 set out the following criteria:⁶⁰⁷

1. Cancellation of the remainder of the sentence of female prisoners who have been imprisoned by 8 March 2018 for not paying the fines.
2. Cancellation of the rest of the punishment of female prisoners who have been imprisoned by 8 March 2018 under the Vagrants Ordinance.
3. Cancellation of the rest of the punishment of female prisoners whose age exceeds seventy years as of 8 March 2018.

Example 03

The general pardon awarded to mark the Binara Poya Day on 14 September 2008 in commemoration of the inception of the *Bhikkuni* ordination set out the following criteria:⁶⁰⁸

1. All female condemned prisoners who are not on appeal as of 14 September 2008 are commuted to life.
2. All female life prisoners as of 14 September 2008 are commuted to twenty years imprisonment.
3. All female convicted prisoners above the age of sixty as of 14 September 2008 are released.

Table 18.4 is a list of general pardons granted from 2006 to 2015 and the number of prisoners released on those general pardons as presented by the Chief Government Whip on behalf of the MOJ to the parliament in 9 October 2018. The list was presented to the parliament in response to a question raised by a Member of Parliament. The list presented to the parliament is not an exhaustive list as the Chief Government Whip states it was prepared with "information readily available at the time." Table 18.5 is a list of general pardons from December 1990 to February 2015 by the WCP Marks Branch officer in charge. This list is a comprehensive list that includes all the general pardons granted by the President during the specified time period. Table 18.4 provides the number of prisoners who were released from prison while 18.5 provides only the conditions of each general pardon. Both table 18.4 and 18.5 have been presented here for comparison and in order to create a fuller picture, as they are from two different sources. The two tables cannot be combined as table 18.4 does not comprise of all the pardons that are captured in 18.5.

⁶⁰⁷ Department of Prisons, Circular No 15/2010

⁶⁰⁸ Department of Prisons, Circular No 50/08

Table 18.4 – List of general pardons granted from 2006 to 2015 and the number of prisoners released on those general pardons.⁶⁰⁹

Year	General pardons	Number of released prisoners
2006	2006.02.04 Independence Day	2,217
	2006.03.08 International Women's Day	33
	2006.09.12 Prisoners Welfare Day	1,318
2007	2007.02.04 Independence Day	1,945
2008	2008.02.04 Independence Day	2,281
2009	2009.02.04 Independence Day	2,575
	2009.03.08 International Women's Day	10
	2009.05.08 Vesak Poya Day	651
	2009.06.07 Poson Poya Day	583
	2009.07.27 On behalf of the Dalada Perahera	1,900
	2009.09.12 Prisoners Welfare Day	1,618
2010	2010.02.04 Independence Day	1,583
	2010.03.08 International Women's Day	30
	2010.09.12 Prisoners Welfare Day	1,365
2011	2011.02.04 Independence Day	1,690
	2011.05.17 Vesak Poya Day	956
	2011.09.12 Prisoners Welfare Day	1,040
2012	2012.02.04 Independence Day	1,385
2013	2013.02.04 Independence Day	1,270
	2013.09.12 Prisoners Welfare Day	938
2014	2014.02.04 Independence Day	1,233
	2014.05.14 Vesak Poya Day	533
2015	2015.01.13 on behalf of the Holy Pope's Visit to Sri Lanka	619
	2015.02.04 Independence Day	554
	2015.05.03 Vesak Poya Day	429
	2015.12.25 Christmas Day	553

Table 18.5 – List provided to the Commission by the WCP Marks Branch

Date	Occasion	Type of general pardon
1990.12.25	Christmas Day	All condemned prisoners commuted to life; Cancelling the remainder of the sentences in lieu of fines; 3 weeks' worth remission for each year (or part of a year) spent in prison
1991.02.04	Independence Day	Same as above
1991.04.17	Ramadan Festival	Same as above
1991.05.27	Vesak Poya Day	Same as above

⁶⁰⁹ Parliamentary Deb 9 October 2018, vol 263 – No. 9, col 1001

1991.11.05	Deepavali Festival	Same as above
1991.12.25	Christmas Day	Same as above
1992.01.02	Anniversary of the President's assumption of duties	Cancelling the remainder of prisoners with a sentence of 6 years or less; 1 month worth remission points for all prisoners
1992.02.04	Independence Day	All condemned prisoners commuted to life; Cancelling the remainder of the sentences in lieu of fines; 3 weeks remission for each year (or part of a year) spent in prison
1992.04.05	Ramadan Festival	Same as above
1992.05.16	Vesak Poya Day	Same as above
1992.10.25	Deepavali Festival	Same as above
1992.12.25	Christmas Day	Same as above
1993.01.02	Anniversary of the President's assumption of duties	Cancelling the remainder of prisoners with a sentence of 6 years or less; 1-month worth remission points for all prisoners
1993.02.04	Independence Day	All condemned prisoners commuted to life; Cancelling the remainder of the sentences in lieu of fines; 3 weeks remission for each year (or part of a year) spent in prison
1993.03.25	Ramadan Festival	Same as above
1993.05.05	Vesak Poya Day	Same as above
1993.11.13	Deepavali Festival	Same as above
1993.12.25	Christmas Day	Same as above
1994.02.04	Independence Day	Same as above
1994.03.14	Ramadan Festival	Same as above
1994.05.24	Vesak Poya Day	Same as above
1994.11.02	Deepavali Festival	Same as above
1994.11.12	Anniversary of the President's assumption of duties	Same as above
1995.01.20	Celebrating the Holy Pope's visit to Sri Lanka	Same as above
1995.02.04	Independence Day	Same as above
1995.03.03	Ramadan Festival	Same as above
1995.05.14	Vesak Poya Day	Same as above
1995.10.23	Deepavali Festival	Same as above
1995.11.12	Anniversary of the President's assumption of duties	Same as above
1996.02.04	Independence Day	Same as above
1996.02.21	Ramadan Festival	Same as above

1996.04.11	Special pardon	1 month worth remission points given only to the 20 prisoners who contributed to the Vesak lantern making
1996.05.03	Vesak Poya Day	All condemned prisoners commuted to life; Cancelling the remainder of the sentences in lieu of fines; 3 weeks remission for each year (or part of a year) spent in prison
1996.11.10	Deepavali Festival	Same as above
1996.11.12	Anniversary of the President's assumption of duties	Same as above
1996.12.25	Christmas Day	Same as above
1997.02.04	Independence Day	Same as above
1997.05.21	Vesak Poya Day	Same as above
1997.10.20	Deepavali Festival	Same as above
1997.11.12	Anniversary of the President's assumption of duties	Same as above
1997.12.25	Christmas Day	Same as above
1998	No general pardons granted	
1999.02.04	Independence Day	Cancelling the remainder of the sentences in lieu of fines
2000.02.04	Independence Day	Same as above
2001.08.24	Commemorating the 1953 Hartal	Cancelling the remainder of the sentences in lieu of fines, imposed on those who were unable to pay cultivation loans
2002.02.04	Independence Day	Cancelling the remainder of the sentences in lieu of fines (fines less than Rs. 10,000 and other fines for the categorized offences)
2002.05.26	Vesak Poya Day	All condemned prisoners commuted to life; Cancelling the remainder of the sentence of those who are to be released in 3 months or before; 1 week remission for each year (or part of a year) spent in prison
2002.12.25	Christmas Day	Cancelling the remainder of the sentence of those who are to be released in 3 months or before; Cancelling the remainder of sentences in lieu of fines
2003.02.04	Independence Day	Same as above
2003.05.15	Vesak Poya Day	Same as above
2004.02.04	Independence Day	Same as above 1 week worth remission points for each year (or part of a year) spent in prison
2004.05.04	Vesak Poya Day	Same as above

2004.11.12	Anniversary of the President's assumption of duties	Same as above
2005.02.04	Independence Day	Same as above
2006.02.04	Independence Day	1 week worth remission points for each year (or part of a year) spent in prison Cancelling the remainder of the sentences in lieu of fine
2006.03.08	International Women's Day	Of the female prisoners: Cancelling the remainder of the sentences in lieu of fines; Cancelling the remainder of the sentences of those imprisoned under the Vagrants Ordinance; Cancelling the remainder of the sentences of those who are older than 70 years
2006.09.12	Prisoner Welfare Day	Cancelling the remainder of the sentences in lieu of fines; Cancelling the sentences of prisoners who are older than 70 years
2007.02.04	Independence Day	1 week worth remission points for each year (or part of a year) spent in prison Cancelling the remainder of the sentences in lieu of fine
2008.02.04	Independence Day	Same as above
2008.09.14	Binara Poya Day in commemoration of the inception of the <i>Bhikkuni</i> ordination	Of the female prisoners: Commuting all condemned prisoners (not on appeal); Commuting all life prisoners to 20 years imprisonment; Cancelling the remainder of the sentences of those who are older than 60 years
2009.02.04	Independence Day	1 week worth remission points for each year (or part of a year) spent in prison; Cancelling the remainder of sentences in lieu of fines; Cancelling the remainder of the sentences of those charged under the military acts for desertion (for those who have spent half or more of their sentences)
2009.03.08	International Women's Day	Of female prisoners: Commuting all condemned prisoners to life (not on appeal); Cancelling the remainder of the sentences of those who are older than 60 years
2009.05.08	Vesak Poya Day	Pardoning all those imprisoned under the military acts for desertion

2009.06.07	Poson Poya Day	Cancelling the remainder of the sentences of those who have served 6 months or more, imprisoned for desertion of the military
2009.07.27	Celebrating the Dalada Perehara	Pardonning all those imprisoned under the military acts for desertion
2009.09.12	Prisoner Welfare Day	Cancelling the remainder of the sentences in lieu of fines; Cancelling the remainder of the sentences of those older than 70 years
2010.02.04	Independence Day	1 week worth remission points for each year (or part of a year) spent in prison; Cancelling the remainder of sentences in lieu of fines;
2010.03.08	International Women's Day	For female prisoners: Cancelling the remainder of the sentences in lieu of fines; Cancelling the remainder of the sentences of those imprisoned under the Vagrants Ordinance; Cancelling the remainder of the sentences of those who are older than 70 years
2010.09.12	Prisoner Welfare Day	Cancelling the remainder of the sentences in lieu of fines; Cancelling the remainder of the sentences of those older than 70 years
2011.02.04	Independence Day	Same as above
2011.05.17	Vesak Poya Day	1 week worth remission points for each year (or part of a year) spent in prison; Cancelling the remainder of sentences in lieu of fines; Cancelling the remainder of the sentences of those older than 75 years
2011.09.12	National Prisoners Day	1 week worth remission points for each year (or part of a year) spent in prison; Cancelling the remainder of sentences in lieu of fines; Cancelling the remainder of the sentences of those older than 70 years
2012.02.04	Independence Day	Same as above
2013.02.04	Independence Day	1 week worth remission points for each year (or part of a year) spent in prison; Cancelling the remainder of sentences in lieu of fines;
2013.09.12	National Prisoners Day	1 week worth remission points for each year (or part of a year) spent in prison;

		Cancelling the remainder of sentences in lieu of fines; Cancelling the remainder of the sentences of those older than 70 years
2014.02.04	Independence Day	Same as above
2014.05.14	Vesak Poya Day	Same as above
2015.01.14	Celebrating the Holy Pope's visit to Sri Lanka	1 week worth remission points for each year (or part of a year) spent in prison; Cancelling the remainder of the sentences in lieu of fines; Cancelling the remainder of the sentences of those older than 75 years
2015.02.04	Independence Day	Same as above

Certain privileges such as seven days remission given for every year served in prison are not necessarily based on a clear set of guidelines with justified reasons.⁶¹⁰

In the 1980s and 1990s general pardons were granted widely with much higher points of remissions awarded, such as giving twenty-one days remission. However, like with commutation committees, public backlash led to limiting the amounts of remission points awarded and the number of pardons per year. In a letter dated 4 March 1999 to the Cabinet, then President Chandrika Bandaranaike Kumaratunga wrote the following:

‘I agree with the recommendation to reduce the number of occasions and limiting it only to mark the Independence Day subject to the above restrictions.’

Former CGP Mr. Dhanasinghe further described the reduction thus:

“There was a time when remissions were given with much generosity. There was a year when seventeen general pardons were given and remission for each general pardon was twenty-one days.⁶¹¹ There is a story that because of this reason, one man who was initially condemned was let out of prison in about ten to twelve years. This created a backlash. So, they changed it to fourteen days remission, and now it’s seven days remission.”

Prisoners sentenced for the following offences, which are considered grave crimes, and are set out in the grave crimes list prepared by the MOJ, are not eligible for release, commutation or remissions by way of general pardons. The MOJ grave crimes list is not a permanent list

⁶¹⁰ For a detailed discussion on remissions, please refer chapter Rehabilitation of Prisoners.

⁶¹¹ If a general pardon grants twenty-one remission points for each year served, a prisoner who has been given a twelve year sentence, and has served five years in prison would be eligible for 21X5 remission points per year. If in a certain year seventeen general pardons are awarded, the said prisoner is eligible for 21X5X17 remission points. This is in addition to the normal remissions calculated.

and can be amended as the MOJ wishes, as pointed out by Ms. Piyumanthi Pieris, Additional Secretary (Legal), Ministry of Justice who stated:

"The list of 'grave crimes' is quite old. They may add or drop offences, but for the most part the list is fixed. The Ministry had come up with the list – based on what are grave crimes – crimes where the social impact is high, heinous crimes like rape and child abuse, crimes against the state, crimes where imprisonment is to work as deterrence, crimes that cannot be pardoned."

Table 18.6: List of offences which are considered to be 'grave crimes' for which prisoners cannot be pardoned

Criminal offence	Section of the Penal Code
Unlawful assembly	140 - 142 and 146
Robbery	380, 382 and 383
Housebreaking and Housebreaking by night	431, 432, 440, 441 Housebreaking, 443 and 446 Housebreaking by night
Treasonous acts	114-123
Kidnapping and Abduction	354 – 360
Obscene publication and exhibition relating to children	286A
Cruelty to Children	308A
Debt bondage, serfdom, forced or compulsory labour, slavery and recruitment of children for use in armed combat	358A
Procuration	360A
Sexual Exploitation of Children	360B
Trafficking	360C
Soliciting a child	360E
Rape	364
Incest	364A
Unnatural Offences	365
Acts of gross indecency between persons	365A
Grave sexual abuse	365B
Guilty under Bribery Act	
Guilty under Offences under Offensive Weapons Act, No.18 of 1966	
Guilty under the Firearms Ordinance	
Offences under the Prevention of Terrorism (Temporary Provisions) Act, No.48 of 1979	
Offences under the Offences Against Aircraft Act, No.24 of 1982	

Offences under the Poison, Opium and Dangerous Drugs Ordinance	
Guilty under Emergency Laws	
Imprisoned for evading payment in income tax cases	
Guilty under Customs Ordinance	
Guilty under the Prevention of Money Laundering Act, No. 5 of 2006	
Guilty under the Financial Transactions Reporting Act, No.6 of 2006	
Guilty under the Convention on The Suppression of Terrorist Financing Act, No. 25 of 2005	
Guilty as pronounced by Military Court under Army Act, Navy Act or Air Force Act for above offences	

Shortcomings in the system of general pardons

A crucial shortcoming of the general pardoning system as it is currently operated in practice, is that it is not based on objective criteria and there is no transparency in the decision making with regards to what crimes and offences constitute ‘grave crimes’.

For example, if a prisoner who has served twelve years in prison for a twenty-five years sentence, is older than seventy years and was convicted for house breaking (Sec. 431 of the Penal Code), s/he would not be eligible for general pardon by way of cancellation of the remainder of the sentence due to the fact that the crime for which s/he is convicted is considered a ‘grave crime’. The arbitrary nature of deciding the offences that should be included in the list of grave crimes is highlighted by a male life prisoner in MCP who said, “There is a distinction between stealing at night and stealing during the day. Theft at night isn’t pardoned but thefts during the day are.” The prisoner is pointing to the fact that process of formulating the list is arbitrary, like attempting to make a distinction between theft at night and theft at day time.

It should be noted that such a list, which plays an important role in deciding the early release of prisoners, is subjective and susceptible to value judgments in the absence of objective criteria. A list of ‘grave crimes’ that was decided upon by individuals decades ago cannot and should not be used to decide who is worthy of release today. For example, the list of grave crimes includes ‘unnatural offences’, which is an archaic provision of law used to prosecute persons of different sexual orientations.

8. Reconceptualising the process of evaluation for early release

In order for the correctional objectives of the prison system to function efficiently and equitably, a series of reforms is required from the point of a prisoner's entry to prison, until their eventual release.

Firstly, as discussed in the Rehabilitation of Prisoners chapter, by conducting periodic risk assessments of each prisoner, through a thorough review of the background of the prisoner and the crime or offence committed, a carefully devised individualized rehabilitation plan for the prisoner can be formulated.

The following methods could be effective in this regard whereby each prisoner is subjected to an assessment and a clear plan for rehabilitation is outlined:^{612,613}

I. Individualization

Individual characteristics of prisoners should be taken into consideration when formulating a sentence plan, i.e. post-incarceration plan for rehabilitation. For example, in the UK a sentence plan is compiled for every offender to identify the potential risks the prisoner could pose, as well as the needs of the prisoner. This provides a structure to imprisonment and sets out targets for the prisoner to achieve, with the aim of reducing the sentence and also the likelihood of recidivism.⁶¹⁴ The plan allows prisoners to have an individualized rehabilitation process by identifying the specific requirements for each person. For example, a prisoner convicted for a violent crime may need psychological evaluations to identify behavioural and psychological issues, after which counselling and treatment can be planned. This will enable the prisoner to have knowledge of, and therefore understand the rehabilitation process mapped for him/her, which would encourage the person to actively work towards achieving the targets and goals.

The preliminary assessment should be conducted by a team that includes prison officers, psychologists, criminologists, educators and social workers. A periodic review of the prisoner enables the prison administration to understand the success of the initial plan and to revise the plan if required. This system can be incorporated into the four-year evaluations system discussed in a previous section. For example, in the UK the sentence plan allows for the evaluation of the risk level of the prisoner, and consequently change his/her place of accommodation.⁶¹⁵

If, after careful medical and psychological examinations, prisoners appear to have severe psychopathic tendencies or the crime and/or the offence was brutal in nature and was carefully planned, the person would not be found eligible for commutation or release. Such

⁶¹² https://cdn.penalreform.org/wp-content/uploads/2018/04/PRI_Life-Imprisonment-Briefing.pdf

⁶¹³ 'Situation of life-sentenced prisoners', European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) <https://rm.coe.int/16806cc447>

⁶¹⁴ Justice.gov.uk, Sentence Planning' - (<https://www.justice.gov.uk/downloads/offenders/psipso/psi-2014/psi-19-2014-ai-14-2014-pi-13-2014-sentence-planning.pdf>, 17 December 2012)

⁶¹⁵ Ibid

persons should then be re-directed to other institutions built and designed to address the specific issues presented in these circumstances. Equally, those who start their sentence as dangerous may well become significantly less so, not just with the passage of time during lengthy sentences, but also with targeted interventions and treatment.

II. Evaluations system

The aim of a rehabilitation plan coupled with evaluations is to enable the prisoner to progressively move through the prison system to less restrictive conditions, to commutation of sentence and eventually release. A periodic evaluation every four years, as outlined in the PO, should be conducted but in a manner that is more comprehensive and elaborate. An expert panel, independent to the prison administration, should be appointed for the purpose of evaluating a prisoner's rehabilitation progress. The evaluation system needs to be strengthened by setting out clear guidelines whereby an expert group evaluates the prisoner to decide not only the progress of rehabilitation, but also the tendency to re-offend and any expected risks to society upon release.

Mr. Anura U.K. Ratnayake who is a rehabilitation officer at WCP, and has decades of experience as a Rehabilitation Officer, also highlighted the need to improve the current system with internationally recognized best practices. Mr. Ratnayake stated that:

"The British system of assessment should be introduced in Sri Lanka. They have an assessment when the person enters prison and they make a plan for rehabilitation. So, the prisoner knows what he is supposed to do if he wants to go out early. We can have a points system, like remission, which provides points for good behaviour and deducts points for bad behaviour.

In the UK system, the prisoner is evaluated every four years. At the first four-year mark if the prisoner's rehabilitation has not proven to be satisfactory, they give him one more year to catch up with the lost goals. They do this for twelve years –i.e. they conduct three rounds of assessments. Then they release the prisoner on parole. So, the prisoner is on observation for five years after that. After the five years of observation is completed, he is a completely free man. This is what they do for long term prisoners like the ones given life sentence.

The earlier evaluation system in Sri Lanka was flawed because it made everyone go out of prison early without proving whether they have been rehabilitated or not. Some people need more rehabilitation than others. Some people are innocent and some people are not. You can't judge everyone the same way. Rehabilitation needs to be individualized."

Finally, where it is deemed that a prisoner may be fit for early release after a careful assessment process, the prisoner would become eligible to go on Home Leave. Thus, the evaluation system will culminate in the Home Leave process, which includes the social reports and opinion of the community. Following the completion of Home Leave successfully,

the License Board will come into effect and a comprehensive and holistic assessment of the prisoner will be undertaken as the final step before release.

While standardized evaluations can be based on an individualized rehabilitation plan as discussed above, those prisoners who are identified as needing further assessment can be directed to a specialized commutation committee, which can function as a filtering mechanism to identify risks of re offending, and the like. The committee can review each prisoner on a case-by-case basis to understand any presumed risks to society. For example, when a particularly brutal crime is committed, the prisoner may prove to be more high risk than others and would thus require thorough monitoring and assessment compared to other prisoners.

However, by simply compiling a list of grave crimes to identify who is a high-risk offender does not serve any purpose since the circumstances of each offence and crime depend on a multitude of social, economic and psychological factors, which are not always measured by the judicial and legal process. Therefore, for example, everyone who is convicted of murder would not be automatically considered high risk offenders, if extenuating circumstances are identified in the assessment, i.e. a victim of long-term domestic abuse convicted of manslaughter of the abuser may not be considered high risk upon primary assessment, while a prisoner convicted of sexual violence against children may require more individualized psychological assessment and treatment.

Thus, it must be highlighted that commutations or releases based on evaluations should not be a 'one size fits all' approach. The decision needs to be made on a case-by- case basis, depending on a multitude of factors, such as rehabilitation, the likelihood of reintegration and the presumed risk to society. By way of evaluations some prisoners may be eligible for release from prison, while some may be eligible for further commutation.

9. Best international practices

Best practices can be adopted from countries such as Norway, which has one of the lowest recidivism rates in the world, at 20%. The Norwegian prison system focuses on rehabilitation rather than punishment, which is based on the principle that justice is best served when prisoners who are less likely to re-offend are released from correctional institutions. As per the 'guiding principle of normality', within such a system, prisoners are treated with dignity and respect and can enjoy access to the full extent of the human rights and services in prison to which they are entitled. Such a system enables the repair and restoration of the civic contract among the citizen and state and society and thereby creates trust, which enables prisoners to become law-abiding citizens. Most importantly, to minimize recidivism it is crucial to ensure a safety net exists for prisoners when they are released- for instance, a system that supports prisoners to access housing, employment,

education and health care, including counselling and treatment for addictions⁶¹⁶ is imperative.

The penal system in Norway does not have the death penalty or life imprisonment. The maximum number of years to which a person can be sentenced is twenty-one years, while the average time actually spent in prison is about eight years.⁶¹⁷ The rationale of this imprisonment policy, the success of which is supported by studies, is that harsh treatment and conditions experienced in long term incarceration may bring about a criminogenic effect⁶¹⁸ (i.e. a system, situation, or place causing or likely to cause criminal behaviour)⁶¹⁹. As the Bastoy Prison Governor (equivalent to a SP) stated in an interview to The Guardian newspaper:

'In closed prisons we keep them locked up for some years and then let them back out, not having had any real responsibility for working or cooking. In the law, being sent to prison is nothing to do with putting you in a terrible prison to make you suffer. The punishment is that you lose your freedom. If we treat people like animals when they are in prison, they are likely to behave like animals. Here we pay attention to you as human beings.'⁶²⁰

A report on a comparative analysis on long term incarceration and recidivism quotes a senior adviser in the Norwegian Ministry of Justice:

'Prisoners are required to take responsibility for their actions-past, present and future... We believe that it is more effective for a person to want to stay away from crime than for systems to try and scare them away from it. Who would you rather have as a neighbour?'⁶²¹

⁶¹⁶ Carolyn W. Deady, 'Incarceration and Recidivism: Lessons from Abroad', Pell Centre for International Relations and Public Policy, <https://salve.edu/sites/default/files/filesfield/documents/Incarceration_and_Recidivism.pdf> accessed on 1 January 2019

⁶¹⁷ Kriminalomsorgen, 'About the Norwegian Correctional Service' <<http://www.kriminalomsorgen.no/information-in-english.265199.no.html>> accessed 1 January 2019

⁶¹⁸ Long term incarceration may result in a criminogenic effect due to a multitude of factors, such as a long-term interruption to normal adult development, prison institutions socializing offenders into anti-normative lifestyle, conditions in prisons resulting in deprivations and victimizations of prisoners, and association of non-violent offenders with violent offenders and criminal networks.

⁶¹⁹ Steven N. Durlauf and Daniel S. Nagin, 'Imprisonment and Crime: Can both be reduced?' (2011) 10 Criminology & Public Policy, 13

⁶²⁰ Erwin James, 'The Norwegian prison where inmates are treated like people' *The Guardian* (25 February 2013) <<https://www.theguardian.com/society/2013/feb/25/norwegian-prison-inmates-treated-like-people>> accessed 1 January 2019

⁶²¹ ibid

10. General observations

The rehabilitation process discussed above, comprising commutation, systems of evaluations, remission, Home Leave and License Board, alongside special pardons and general pardons is designed with the view that incarceration must lead to rehabilitation and social re-integration, and long-term imprisonment must be avoided. However, the implementation of these systems has been ad hoc and arbitrary and subject to political interference, which taints the purpose of incentivising early release and results in the unequal application of the law. This results in the denial of equal opportunity to be released early, based on the extent of their rehabilitation, to prisoners. The alleged past abuses of good systems, such as the system of evaluations, has resulted in the discontinuation of these measures which results in prisoners being held in prison for a prolonged period of time, thus offsetting any potential benefit of imprisonment. Given the widely accepted benefits of early release and the high social and financial cost of long-term imprisonment, weaknesses within the system have to be reviewed and rectified, rather than eradicating these measures.

Home Leave and early release on License is the culmination of the rehabilitation process in prison and is considered to be the ultimate reward for prisoners who have maintained good behaviour during their sentence. The reward of early release, which is viewed not as an entitlement but rather a privilege, is inefficient and rife with delays, and therefore may diminish the impact of the incentive for prisoners to behave well during the sentence.

One concern observed with regards to the Home Leave and License Board process is the lack of a standardized format of social reports required to assess the prisoner's progress, which often depend on the competence of the officer compiling them. The Home Leave and License Board processes are also beset with multiple delays, both on the part of each individual prison administration, the DOP and the Ministry, owed to the time taken to prepare the reports as well as other administrative delays in the communication between the three entities. There is also an inadequate number of Rehabilitation Officers in each prison as well as minimal resources at their disposal to complete their tasks efficiently.

Another obstacle faced by some prisoners wishing to go on Home Leave is the lack of cordial relations with family members or the refusal of the community to accept the prisoner into society, a factor which is beyond the inmate's control and independent of whether they have been rehabilitated during their prison sentence. Female inmates are also inherently at a disadvantage in this process because the lack of rehabilitative activities and leadership positions available for women prevent female prisoners from presenting a strong case for early release before the Board.

The Commission also observed there is no written policy or guideline for members of the License Board to utilize when assessing a candidate's suitability to be released, and to guide subsequent committees to ensure a standard procedure is followed. The lack of objective standards and the lack of transparency could result in the personal bias and opinions of committee members influencing decision-making. This is a concern highlighted with regard to Home Leave as well, since persons whose home leave applications have been rejected are not given reasons for the rejection.

Statistics indicate that the process is effective because the number of prisoners whose licenses have been revoked is minimal, illustrating that by reducing the administrative delays in the process and increasing transparency, early release measures can be incentivised to encourage prisoners to reform themselves in prison, which will also contribute to maintenance of order and discipline in the facility.

The lack of holistic implementation of these mechanisms and the detention of prisoners for indefinite periods of time has meant that the stated objectives of the DOP, which are ‘social integration of inmates as good citizens through rehabilitation,’ and ‘[contributing] to the creation of a more civilized society by proper rehabilitation of prison inmates, enabling them to become law abiding and humanitarian persons,’⁶²² are being undermined. A reform of the rehabilitation and early release process is integral for the efficient and equitable operation of correctional institutions. A key reform is the inclusion of external and independent persons, including psychiatrists and psychologists, to play a role in the evaluation of prisoner’s rehabilitation and eligibility for commutation and early release.

⁶²² Department of Prisons, ‘Vision\Mission\Target’ <www.prisons.gov.lk/vision/vision_english.html> accessed 1 January 2019

19. Prisoners on Death Row

"I didn't know about prisons before. When I lived in Kandy I used to be scared even to walk near the [Bogambara] prison. I used to think that this place is filled with murderers and evil people. Only after I was sent here [as a condemned prisoner], I got to know the kind of injustices people face... Every day I think of the injustice that happened to me and my family"

Sixty-four-year-old condemned prisoner
Has been in prison since 1998, has been on death row since 2003

1. Introduction

The Human Rights Commission has consistently called for the abolition of the death penalty in Sri Lanka^{623,624} due to several factors, including the fact it is a cruel and inhuman punishment, and violates the right to life and right to be free from cruel, inhuman, degrading treatment and punishment. A punishment of death is irreversible and is globally recognized as an ineffective deterrent to crime. This study recognized prisoners on death row as a vulnerable group in the prison system, and the empirical information gathered by the Commission on condemned prisoners substantiates the position of the Commission and the reasons behind the call for abolition.

As per a decision taken at the first cabinet meeting of then Prime Minister S.W.R.D. Bandaranaike government in 1956, then Parliamentary Secretary to the Ministry of Justice Mahanama Samaraweera presented draft legislation proposing the suspension of capital punishment. Consequently, the Suspension of Capital Punishment Act No. 20 of 1956 suspended capital punishment for murder and abetment of suicide and instead imposed life imprisonment.⁶²⁵ The Act also commuted all those on death row to life imprisonment. However, with the assassination of Prime Minister Bandaranaike, the caretaker government that was in place reintroduced the death penalty in 1959 with the passing of the Suspension of Capital Punishment (Repeal) Act No. 25 of 1959. Since the last execution that took place in 1976, a de facto moratorium has been in place. Further, Sri Lanka has consistently voted in favour of the UN General Assembly resolution on the moratorium on the use of death penalty since it was introduced in 2007, with the most recent vote being in September 2018. The said resolution calls upon states to:

⁶²³ Letter of the Human Rights Commission of Sri Lanka to President H.E. Maithripala Sirisena, President of the Democratic Socialist Republic of Sri Lanka (1 January 2016) <<http://hrcsl.lk/english/2016/01/04/hrcsl-recommend-to-abolished-death-penalty-in-sri-lanka/>> accessed 12 December 2018

⁶²⁴ Letter of the Human Rights Commission to the President H.E. Maithripala Sirisena (13 July 2018) <<http://hrcsl.lk/english/2018/07/14/hrcsl-writes-to-h-e-president-on-death-penalty-in-sri-lanka/>> accessed 12 December 2018

⁶²⁵ Suspension of Capital Punishment Act No. 20 of 1956 was passed in parliament to be in effect for three years and to expire, until the Senate and the House of Representatives by resolution to declare that the Act is to continue. Following the temporary suspension of the capital punishment, parliament appointed a committee, the Morris Commission, to study to whether the death penalty has any deterrence value.

recognize that ‘any miscarriage or failure of justice in the implementation of the death penalty is irreversible and irreparable;’

acknowledge ‘that a moratorium on the use of the death penalty contributes to respect for human dignity and to the enhancement and progressive development of human rights, and considering that there is no conclusive evidence of the deterrent value of the death penalty;’

recognize the ‘role of the national human rights institutions in contributing to ongoing local and national debates and regional initiatives on the death penalty; and

emphasize the ‘need to ensure that persons facing the death penalty have access to justice without discrimination, including access to legal counsel, and that they are treated with humanity and with respect for their inherent dignity and in compliance with their rights under international human rights law.’

Moreover, at the Seventh World Congress against Death Penalty held in Belgium in February - March 2019, the then Minister of Justice, Ms. Thalatha Athukorala declared that the moratorium of the death penalty in her country continues and she called upon every country to support Sri Lanka.⁶²⁶

2. The legal framework

2.1. International legal framework

Article 6 of the ICCPR, which Sri Lanka has ratified, states that every person has the inherent right to life, which shall be protected by law and no person shall be arbitrarily deprived of life. ICCPR stresses that state parties that have not abolished the death penalty have an obligation to limit the imposition of it to the most serious crimes. Further, every state has an obligation to ensure that anyone sentenced to death shall have the right to seek a pardon, or commutation, and such pardons and commutations shall be granted in all cases, irrespective of the offences and crimes for which they are convicted. The death penalty shall not be imposed for crimes committed by persons below eighteen years, nor shall it be carried out on pregnant women. ICCPR affirms that each state party has an obligation to take steps towards the abolition of the death penalty without undue delay.

General Comment 6 of ICCPR further elaborates on the right to life and states that all steps taken toward the abolishment of the death penalty constitute a development of the right to life. It calls for a restrictive interpretation of ‘most serious crimes’ to indicate that the death penalty is an exceptional measure. The Comment also stresses the importance of due process

⁶²⁶ “There is no justice in death – Voices from the Opening of the 7th World Congress, <http://congres.ecpm.org/en/there-is-no-justice-in-death-voices-from-the-official-opening-of-the-7th-world-congress-against-the-death-penalty/>

rights, in addition to the particular right to seek a pardon or commutation of the sentence. The Second Optional Protocol to ICCPR, which Sri Lanka has not ratified, requires each state party to take all necessary measures to abolish the death penalty.

Safeguards guaranteeing the protection of the rights of those facing the death penalty, adopted by the UN Economic and Social Council in 25 May 1984 by way of resolution 1984/50 sets out guidelines to ensure that in countries where the death penalty is not abolished specific rights of prisoners facing the death penalty are assured. These, in addition to the aforementioned rights in the ICCPR, include the right to adequate legal assistance at all stages of the legal proceedings; the right to have the highest possible means of appeal, and steps to be taken to make those appeals mandatory, and the right to seek pardon or commutation irrespective of the offences and crimes.

Additionally, the right of those who were younger than eighteen years old at the commission of a crime not to be subjected to capital punishment or life imprisonment is further ensured by the Article 37 (a) of the CRC, to which Sri Lanka is a State party.

2.2. National legal framework

According to Section 286 (b) and (c) of the Code of Criminal Procedure Act No 15 of 1979 (hereinafter referred to CCP) the President of Sri Lanka is required to authorize capital punishment in order for an execution to take place and the death penalty is to be carried out via hanging. As per Section 280 of the CCP, the High Court judge before a sentence of death is delivered, addresses the accused directly and invites him/her to say why in his/her opinion the death sentence should not be given to him/her. The judge informs him that what s/he says will be recorded and forwarded to the president. Section 285 (1) of CCP sets out the manner in which the death sentence is to be pronounced. When a person is sentenced to death the sentence shall direct that he be hanged by the neck after the President as the executive signs the death warrant, which specifies the date, time and place of execution.⁶²⁷

The notice given by the High Court to a condemned person states:

“... [HIGH COURT NAME]

[XX High Court] Case number XX
Magistrate court case number XX of XX Magistrate Court

XX, You, the accused of the abovementioned case, against whom this court has pronounced the sentence is that, to hold You from now onwards within the four walls of ...[Bogambara/Welikada] in ...[Colombo/Kandy], and hereby orders to hang You with a noose around Your neck till life ceases, on a day and time nominated by the Hon. President of the Sri Lankan Republic.”

⁶²⁷ Code of Criminal Procedure section 286 (d)

In Sri Lanka, different laws impose the death penalty for various offences, illustrating that the current legal system provides for the imposition of the death penalty in the most expansive manner thereby not adhering to the standards set out by the ICCPR, in particular General Comment 6, which requires a restrictive interpretation of serious crimes for which the death penalty can be awarded. In Sri Lankan law there are eight different offences for which an offender receives the mandatory death penalty such as murder, abetting suicide and various offences under the army, navy and air force Acts. In addition, there are nineteen different offences for which an offender receives the death penalty or life imprisonment, such as drug trafficking and possession, offences under the firearms ordinance such as robbery, kidnapping, extortion, rape etc. when committed with the use of a firearm. [The offences are set out in Annex 19.1.]

There are very minimal legal provisions which prohibit the pronouncement of death penalty against certain persons, such as those who under eighteen years of age. Section 53 of the Penal Code for instance states that 'a sentence of death shall not be pronounced on or recorded against any person who, in the opinion of the court, is under the age of eighteen, years; but in lieu of that punishment, the court shall sentence such person to be detained during the President's pleasure.' Section 53 only prohibits sentencing a person to death if they are younger than eighteen during the time of the pronouncement of the sentence, not at the time the offence was committed. This provision falls short of international standards, which clearly stipulate that any crimes and offences committed by a person under the age of eighteen shall not be punished with death. Supreme Court jurisprudence states that⁶²⁸ the age of the accused could be considered a mitigating factor when imposing a sentence in instances the law has given the judge the discretion, and not in instances the sentence is mandatory. Since death is a mandatory sentence for murder the judge does not have the discretion to impose any sentence other than death. However, the Supreme Court further held that amending Section 53 of the Penal Code is a matter for the legislature, especially in view of the directive principles of State Policy that states 'the state shall promote with special care, the interest of children and youth, so as to ensure their full development, physical, mental, moral and social, and to protect them from exploitation and discrimination.' In this regard, the Supreme Court highlighted Sri Lanka's international obligations under several international instruments, including the CRC, and reiterated that the state had to ensure that child offenders are treated 'in a manner that is consistent with the promotion of the child's sense of dignity and worth, which takes into account the child's age and the desirability of promoting the child's reintegration in society.'

Further, Section 54 of the Penal Code states that 'Sentence of death shall not be pronounced on or recorded against any woman who is found, in accordance with the provisions of Section 282 of the CCP, to be pregnant at the time of her conviction; but, in lieu of that punishment, the court shall sentence her to imprisonment of either description or life or any other term.'

⁶²⁸ *P. D. Nilanka and K. P. Samantha v AG*, SC Appeal No. 139/2014, Supreme Court in 2018

Appeal procedure

Section 331 of the CCP lays out the right to appeal as follows. The provision states that on behalf of a [condemned] prisoner, a jailor from the prison shall prepare the petition of appeal, after inquiring from the [condemned] prisoner whether s/he wishes to appeal. Section 331 states that a person must appeal against a decision of the High Court within fourteen days, and if the person is in prison, that it shall be the duty of a jailor to prepare the appeal petition on behalf of a prisoner. The petition for appeal must include the reasons for appeal and the relief the petitioner is seeking. During the study, the Commission learned that all the prisons to which condemned prisoners are sent, duly follow this procedure and prepare a petition for appeal for any condemned prisoner who wishes to appeal.

Section 333 of the CCP states that once the appeal has been accepted by court [Court of Appeal or Supreme Court], the appeal court [or Supreme Court] may grant bail, if not, the [condemned] prisoner is to be treated as an appellant, as per the PO. Further, the execution shall be stayed until the appeal proceedings are over and the judgment is delivered.

Section 353 of the CCP states that the appeal court may provide legal representation when the condemned person is not able to secure legal representation if it serves the interest of justice. It must be noted that providing legal representation does not guarantee that the legal representation is competent, which is discussed below in the section on meaningful access to legal representation. In addition, prisons do not complete the procedure for appeal to the Supreme Court, as one is not provided with legal assistance at the Supreme Court. Hence, prisoners will not be able to by default access the right to appeal to the Supreme Court since legal assistance is not provided.

Section 172 of the CCP gives effect to the power of the Court of Appeal or the Supreme Court to order retrials or to quash convictions when a valid charge cannot be made against the accused given the facts of the case or where the circumstances warrant the court to 'quash the conviction'. For example, if the court finds that there has been a procedural error by the High Court, it shall direct the same High Court or another High Court to hold a new trial. If the court finds that the evidence presented by the prosecution does not prove the guilt of the accused, the court shall acquit the accused.

2.3. Procedure to implement death sentences

Section 286 of the CCP lays out the procedure to follow when implementing death sentences. After a sentence of death is pronounced by the High Court, the judge signs a warrant and hands over the custody of the condemned prisoner to the SP of the prison at which the gallows are located i.e. the SP of WCP. During the study, the Commission observed that condemned prisoners are housed at other prisons as well because of severe overcrowding in WCP and other factors, such as court orders for special protection. For example, PCP houses the second largest population of condemned prisoners, who were earlier housed at Bogambara prison which had gallows. PCP, to which prisoners were relocated from Bogambara, does not have gallows. ACP also houses a smaller number of

condemned prisoners, who have received permission from prison authorities to be housed in ACP, as their families are from regions closer to ACP.

Section 286 (b) of the CCP states that the trial judge shall prepare a report to be forwarded to the President soon after the pronouncement of death, with notes of evidence made by the judge during the trial, which states his/her opinion as to whether there are any reasons the death sentence should or should not be carried out.

Section 286 (c) of the CCP stated that the President after considering the report of the trial judge, shall inform the High Court, where the sentence of death was pronounced, the decision of the President. Section 286 (d) of the CCP states that the President may order a respite of the execution of the warrant or appoint a date, time and place for the execution to take place.

After a death sentence is pronounced by the Court, the Court hands over the person to the prison until the execution is carried out. This handing over procedure is laid out in the form 'Identification of Persons Sentenced to Death' which should be completed by the Fiscal, Escorting Officers and the Receiving Jailer. The warrant on implementing the execution and detention of a prisoner sentenced to death orders the SP to hold the prisoner 'within the four walls of the prison' until the President pardons the person for compassionate reasons or orders execution. When the President decides on a date and time for the execution, the prisoner is to be hanged from the neck until life ceases and the SP is to report to the Court certifying that the execution has been carried out. The Court orders the SP to keep the prisoner in custody until execution or any other legal order.

Section 286 (e) sets out the procedure for execution. The SP, a jailor, the MO and any other officers required by the SP must be present at the execution. If required a priest/monk/minister of the prisoner's religion, prisoner's relative and any other person who has been granted permission by the SP may be present at the execution. As soon as the execution takes place, the MO must examine the body of the executed prisoner and must ascertain the fact of death. The MO then must sign a certificate of death and forward it to the SP. Within twenty-four hours, the Magistrate of the court nearest to the prison must inquire into and identify the body of the executed prisoner, to ascertain whether the judgement of death was duly executed. The Magistrate then must report this in writing to the High Court which sentenced the prisoner to death, and to the Minister [MOJ].

Section 286 (f) states that if an execution did not take place as ordered by the President on the day, time and place, due to the absence or escape of the prisoner, the execution must be carried out on another date, time and place as the President orders. For example, if a condemned prisoner is ill and is in the hospital when s/he is to be executed, s/he would be hanged on another date as the President orders.

Sections 262 – 272 of PO and Sections 640 – 644 of DSO set out the execution procedure. On the day prior to the execution day, the prisoner's height and weight is recorded by the CJ in the presence of the MO, and the MO records the status of health. This information is then provided to the executioner to calculate the length of the drop that is required. Following the

execution, the MO will ascertain the cause of death and sign the death certificate.⁶²⁹ Section 265 of PO further states that in the case of a pregnancy being declared of a female prisoner sentenced to death, the MO must certify the fact, and the President must be informed for further action. Until an order is received from the President the execution will be halted.

The gallows are housed in C3, one of the three wards at the Chapel wards of WCP where prisoners on death row are housed.

The procedure in practice: how an execution is carried out

There are elements in the procedure which are not laid out in law but are followed in practice. For instance, a former CJ of WCP, and a current ASP, informed the Commission that once the death warrant signed by the President is sent to the prison stipulating a date for a condemned prisoner to be hanged, prison authorities are tasked with carrying out several tasks, such as obtaining a physical fitness as well as mental fitness report of the person to be executed from MOs, along with a report on the condemned prisoner's family. Former CGP, Mr. H. G. Dharmadasa stated that once the death warrant is received by the SP, he must inform the condemned prisoner and the next of kin of the order by the President. He further stated that along with the death warrant an emergency telephone number for the President's office was given when he was tasked with officiating executions, so as to notify the President of any unexpected change in the circumstances prior to an execution, or to receive notice from the President's office on a Presidential pardon or an order to halt the execution, if the President were to have a change of heart.

Mr. Dharmadasa, who as a SP had officiated several executions in the 1970s, stated that on the day of the execution at about 0600h the condemned prisoner is brought to the cell adjoining the gallows after breakfast. The condemned prisoner is then dressed in a manner to prevent him/her struggling while being hanged. For example, a top made of a thick material with a strap and a belt across the body is worn over while the hands are placed inside the suit. A similar strap is placed on the legs. In the morning of the day of the execution a Buddhist monk or a priest would visit the condemned prisoner to give him his last rites. The narrative of a long-term prisoner who was recently released on the recommendation of a commutation committee⁶³⁰ after spending forty-three years in prison describes in detail the many executions, which were carried out during his time in prison:

“The day before the execution, the SP, CJ and the executioner have to do a lot of things. They have to use sand bags to weigh the prisoner, check his height and weight etc. and then they will hang the sand bag that weighs exactly like the prisoner and test the gallows and adjust the rope. When they do all of this, they sometimes empty C3 and house all the condemned prisoners from there

⁶²⁹ DSO 1956, ss 640-644.

⁶³⁰ For a detailed discussion on early release and commutation committee, please refer chapter Early Release Measures .

in another condemned cell ward. Sometimes they would just individually lock everyone's cells.

So, during this last week, the jailor has to 100% check all the other cells and the cells where the man is going to be held to ensure there is nothing in the cell that the condemned man can use to kill himself. Apparently, you can't kill yourself before the State can kill you.

I have seen a Buddhist monk or a Catholic priest visit the condemned man the day before the execution. Maybe they pray for the man and hope he won't have another sad life like that ever again.

I have been in prison for so many executions. There had been weeks where there were two to three executions. They won't hang two people on the same day. I can remember the hangings of Bogambara *Patiya*, *Sana*, *Sanguwa*, *Wili Mama*, *Kalu Albert* and *Hoda Papua* among others. *Hoda Papua* was the last man hanged in Welikada.

Executions always took place at 8.00 in the morning. I think the President always wrote that time. On days when executions take place, prison officers will first send all party people to work parties and lock the gates. Then all the other wards are locked. No prisoner can be outside of their wards/cells. In the condemned cells, individual cells are also locked.

Then they keep the outer main gate and the inner gate to the prison wide open. This, madam, is the only time when both gates to the prison are kept wide open like that. You know that brass colour plate that is hanging by the search room now? One man [a prisoner] will stand by this plate with a big metal club 100% alert. That's because if someone comes in a hurry to the prison to stop the execution, because the president had a change of heart, they must make sure this person can come inside even without a minute's delay. You see, even a one minute delay means they will hang the man, whom the president ordered not to hang. So, when a messenger comes running, he must yell and tell the man with the iron club. Then the man with the iron club starts banging the brass coloured iron plate with all his might. We have heard loud bang bang bang from our work parties. You can hear the sound echoing all over the prison. They can hear the sound all the way at the gallows.

Some people go to their death all silent. Some people go to their death shouting and screaming. Officers say some people look like they have gone mental, like their souls have already left their bodies. Even if we are at our work parties, we will all just stay without doing anything. So, on days of execution you would either hear the loud bang bang bang or nothing or a loud yelling and screaming, crying and cursing of a man that is being hanged. Except that, you don't even hear the sound of the wind on a day of an execution."

3. Statistics of condemned prisoners

Within the Sri Lankan prison system, the term used to refer to death row prisoners is “condemned”. The terminology used to refer to persons on death row is reflective of both the manner in which this category of persons is viewed by society and also as the most marginalized group of prisoners within the prison system.

The last execution in Sri Lanka took place on 23 June 1976 at the WCP gallows. Since then anyone who was sentenced to death is held in prison for an indefinite time period, either until the person receives a pardon, commutation or dies of natural causes. While there has been a moratorium on executions the courts have continued to sentence persons to death, which has resulted in an increase of those on death row.

Majority of death row prisoners are housed at the four closed prisons: WCP, PCP, MCP and ACP.⁶³¹

Table 19.1 – Death row population across the prisons system in Sri Lanka⁶³²

	Men	Women
Total number of prisoners sentenced to death	1196	43
Number of prisoners whose death sentences have been confirmed	358	5
Number of prisoners whose appeals are pending	838	38

Table 19.2 - Death row population across closed prisons⁶³³

Prison	Local Men	Local Women	Foreign Men	Total
WCP	258	4	5	267
PCP	61	1	-	62
MCP	11	-	-	11
ACP	1	-	-	1
	331	5	5	341

Table 19.3 - Death row on appeal prisoner population across closed prisons⁶³⁴

Prison	Local Men	Local Women	Foreign Men	Total
WCP	481	5	2	488
PCP	226	17	-	243
MCP	95	-	-	95
ACP	2	16	-	18
Total	804	38	2	844

⁶³¹ Morning Unlock, 5 April 2018

⁶³² Morning Unlock, 5 April 2018

⁶³³ Other prisons (and institutions) where death row prisoners are housed are: PHfive; ARP seven; KRP two; BRP three; Monaragala four. All these prisoners are Local men.

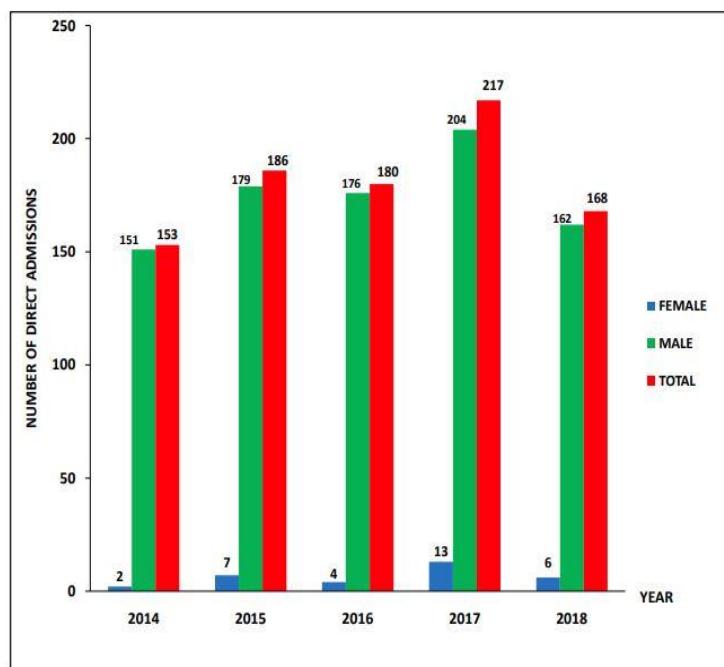
⁶³⁴ Other prisons (and institutions) where death row appeal prisoners are housed are: PHfifteen; ARP three; Kalutara five; KRP three; BRP three; GRP two; KGRP one; JRP four. All these appellant prisoners are Local men.

Table 19.4 illustrates the increasing number of death sentence verdicts given by courts.

Table 19.4 – Number of death sentences imposed from 2016-2018⁶³⁵

Offence	Year								
	2016			2017			2018		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Murder	171	3	174	199	12	211	149	6	155
Drugs	5	1	6	5	1	6	13	0	13
Total	176	4	180	204	13	217	162	6	168

Graph 19.1 – number of death sentences imposed 2014-2018⁶³⁶

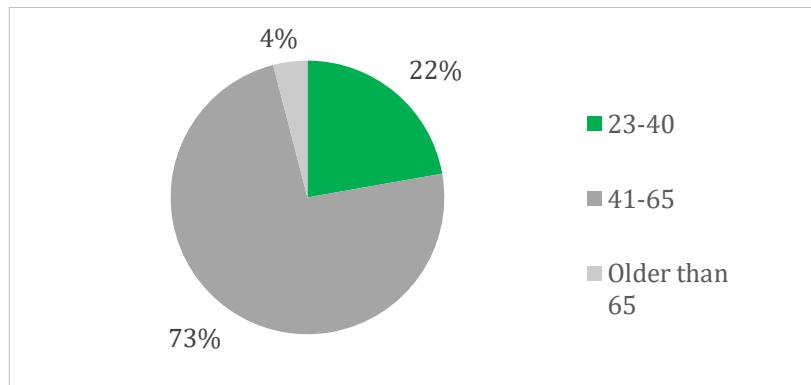


Graphs 19.2 and 19.3 illustrate the age groups of the condemned prisoners. The data highlights that the majority of male and female prisoners on death row are middle aged. It must be noted that the majority of condemned prisoners in the study, as well as in the Sri Lankan prison system are still on appeal.

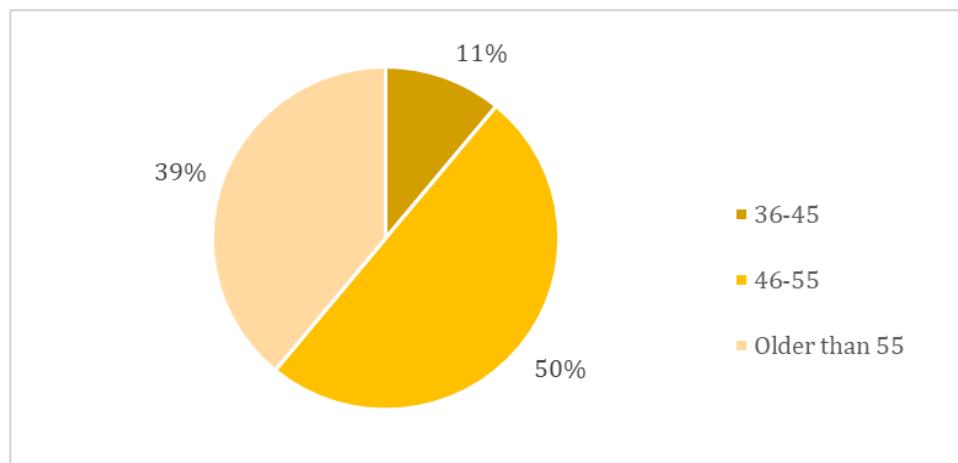
⁶³⁵ Department of Prisons 'Prisons Statistics of Sri Lanka (Vol. 37, 2019), pp 35-37.

⁶³⁶ ibid p 51.

Graph 19.2- Male condemned respondents in our sample according to their age groups at the time of answering the questionnaires.



Graph 19.3- Female condemned respondents in our sample according to their age groups at the time of answering the questionnaires



4. Treatment and conditions of condemned prisoners

4.1. Living conditions

Basic provisions

The condemned prisoners, like convicted prisoners, depend on the prison authorities for their basic provisions. Prisons have to provide condemned prisoners with the 'condemned set' of provisions, as explained by a condemned prisoner and WCP CJ below:

"After being given the death penalty I was brought to C3. At the gate they gave me a checked sarong and the condemned people's top. There were four people

in the cell in which they put me...The next day they brought to my cell another suit, one mat, two tins, one pillow, two buckets, one plate, one water cup."

Former CJ of WCP, Mr. Mohan Karunaratne stated that, "two sets of clothes, soap, toothpaste, sanitary stuff, mat, kambiliya⁶³⁷, piss porch, plate and cup are supposed to be provided by the government [to condemned prisoners]. All these are supposed to be given by the government."

However, condemned prisoners in WCP stated that provisions, such as pillows, depend on availability. Most prison officers stated that the DOP only has allocations to provide two sets of clothes for the entire duration of time a condemned prisoner spends in prison. Many condemned prisoners therefore must depend for decades on their families for basic provisions. They expressed the difficulties their families face and they themselves face, as their family members have to financially support them, and sometimes aging family members from rural areas cannot travel to the prison at which the condemned prisoner is located. In some instances, condemned prisoners expressed how their family members have distanced themselves from the prisoner, due to the social stigma and discrimination the family members themselves face in the society, and therefore has not visited them in prison for years.

Overcrowding

Despite the moratorium on the implementation of the death penalty, courts continue to sentence persons to death resulting in an increasing number of persons on death row, which also has an impact on their living conditions. One of the outcomes of this is overcrowding. For instance, the H ward in WCP is categorized as a 'condemned building' awaiting demolition, but to date condemned prisoners continue to be housed in this building due to the lack of space.⁶³⁸ A former CGP expressed it thus:

"Now there are no more executions, but the Court continues to deliver death sentences. So, the law of the prison has not changed with regards to the treatment of the condemned. According to law, they must be kept in individual cells, but this is no longer possible as there are so many inmates on death row."

H. G. Dharmadasa, former CGP

A prisoner⁶³⁹ at WCP who was sentenced to death on 17 September 1993 and was housed at Chapel C3 cell ward in the 1990s describing the changes that he experienced in his living conditions over the years stated that:

"...there were only seventeen of us in that ward back then. Yes, there were not many people like today. Condemned wasn't granted to everyone like today.

⁶³⁷ Large piece of multipurpose fabric made of thick cotton thread.

⁶³⁸ For a detailed discussion on living conditions of condemned inmates, please refer chapter Accommodation.

⁶³⁹ This prisoner was later commuted on life imprisonment on 25 December 1995. He is currently at Chapel C2 ward where convicted prisoners are housed.

There were two remandees and fifteen were condemned back then. Some cells didn't have people. In 1993-1994, 1995 there was not much of a crowd. It was after 2002 the condemned crowd increased."

Similarly, a prisoner sentenced to death in 1999⁶⁴⁰ stated that:

"I came in as a condemned prisoner in 1999. At that time, I was in an individual cell. Only I. I was like that till 2002. Now that same cell has six to eight condemned prisoners. It is the same here [ACP]. Condemned people are just lying on the floor. It is very sad to see that. Condemned people who are going to be hanged are just lying on the floor."

Section 51 of the PO states that condemned prisoners are to be detained in individual cells. Yet, the Commission observed that in WCP and MCP the condemned and condemned on appeal prisoners are held in cells of about 2.1m X 0.9 m (7ft x3 ft) in size house three to four prisoners in each cell.⁶⁴¹ In PCP, on the other hand, the large majority of condemned prisoners are housed in open wards, which are built to accommodate fifty prisoners but where the numbers of persons per ward varied from eighty to 120. The CGP at the time described the systemic nature of the problem thus:

"I have also asked for help to solve the issues we have in the condemned wards. There are twenty-seven condemn cells in Welikada. There used to be condemned cells in Bogambara but not anymore [there are no cell wards in PCP to house condemned prisoners]. It's a huge problem since we cannot house all the condemned people in one prison separately. It would cause commotions."

Mr. H.M.N.C Dhanasinghe, former CGP

A male condemned prisoner from PCP explains living conditions in their ward:

"It is dark, because there are 120 in the ward. Around eighteen or sixteen has gone to courts. There are only 102 or 104 inside the ward at the moment. There is about six inches inside the ward to walk. Even though the convicted prisoners also don't have much space in their wards, they get to stay outside during the day, but we do not know when we will be able to go out."

Another male condemned prisoner from PCP, who is seventy-one years old and has been on appeal for the past fourteen years describes the living conditions of his ward as follows:

"In Bogambara, I'm the oldest of the condemned prisoners on appeal. There is another man older than me who is condemned. In our open ward there are

⁶⁴⁰ The prisoner is currently at ACP. He was in WCP Chapel condemned wards when he was sentenced to death till 2002. He was commuted to life imprisonment in 2002. For a detailed discussion on Evaluations, Commutation, Special Pardons and General Pardons, please refer chapter Early Release Measures .

⁶⁴¹ For a detailed discussion on the ward conditions in condemned cells/wards, please refer chapter Accommodation.

120 persons but if we look at the size of the ward it's about 20X60 feet. There are 120 people and only five toilets. I have been here for fourteen years. I have been on appeal for fourteen years now."

Another male condemned prisoner who is eighty-four years old and has been on death row for the past seventeen years states, "There are seven people in the room. We have a space problem, but we try to manage. Yes. That means one person cannot sleep on one mat. So, we fold the mat into half and sleep in it. So, it is a bit difficult." This prisoner has been in prison for twenty-four years continuously since 1994, including his remand time as he was unable to post bail. This prisoner who is the oldest condemned prisoner in PCP has been living in such conditions for decades.

Time spent outside of their wards/cells in the outdoor

Condemned prisoners are considered to be "high risk" and are thus locked up the entire day, except for thirty to forty-five minutes each day when they are allowed outside for "exercise". In WCP, PCP and MCP the cell wards and open wards in general lack proper ventilation and natural light. Qualitative data gathered during the study shows that a majority of condemned and condemned on appeal prisoners suffer issues related to losing eye sight due to being housed in a restricted dark space for decades. During the lock up times in the morning, noon and evening, the individual cells within wards are also locked. Throughout the day the main entrance gate to the cell wards and open wards are locked, unlike other wards and cells, and the keys are kept at the gate officer.

In the study, 50% of male condemned prisoners stated that they spend only thirty to sixty minutes per day, outside of their wards, while another 33% stated they spend a little over an hour outside. 36% of female condemned prisoners stated that they spend one-four hours while another 36% stated they could spend about eight hours per day outside. It must be noted that female condemned prisoners have relatively better living conditions compared to the male condemned population. The majority of the female condemned prisoners in the study sample were drawn from PCP, where the female condemned prisoners were given equal outside hours to that of female convicted prisoners. As the majority of the convicted and condemned female population was transferred from WCP to ACP in July 2018, the Commission observed that the female condemned prisoners in ACP were allowed to spend at least about eight hours per day outside their wards, for which they expressed much gratitude.⁶⁴²

In WCP, where the majority of the male condemned prisoners are housed, during unlock times, the condemned prisoners are allowed to be in the corridors of their cell wards, where the TVs are located. The Commission observed that prisoners would sit on the floor or sit on their buckets and spend time chatting, reading or watching TV. Further, in most cell wards, especially in WCP, the bathroom is located in the beginning, middle or at the end.

⁶⁴² For a detailed discussion on living conditions, please refer chapter Accommodation.

The Commission was informed by prisoners at WCP that when a dignitary, such as the Minister, visits, the condemned prisoners are locked up in their cells and they would all try to stand by the gate door of their cell in order to have a chance to speak to the Minister. This means, unless the visiting dignitary enters the ward, condemned prisoners housed at the cells away from the main gate to the ward would not even get an opportunity to talk to the visitor. It must be noted that whenever the Commission visited the condemned prisoners inside their cell wards, they were allowed to remain, as they usually do, in the corridor area of their cell wards.

Although, as evident from the below statement that prisoners in the Chapel ward spend their time mainly watching TV, the Commission observed that in WCP C3 cell ward one of the two TVs was malfunctioning. Condemned prisoners claimed that they requested the authorities to repair the TV multiple times but the prison authorities stated that they have no fund allocations as of yet for such repairs. Many condemned prisoners, who had been in prison for many years stated that watching TV makes them "feel normal". Watching television is the only recreational activity afforded to condemned prisoners who spend more than twenty-three hours per day inside their cell wards/cells, and thus they expressed their sorrow at being deprived of the only mode of access to information from the "normal outside world". This is described by a male condemned prisoner at WCP who had been in the Chapel cell wards for thirteen years as follows:

"I wake up at 0430h or 0500h for praying. *Polin*⁶⁴³ is at 0610h. After that I use the toilet, wash up, have tea, get the breakfast from the kitchen party people, watch TV news till 0800h. Then eat breakfast, wash up again, watch TV programmes till 1200h. I pray at 1200h. Take the lunch from the party people and eat from 1230h to 1245h. Lunch lock up from 1230h to 1430h. Take a nap till open time. 1430h they open again. Take a shower from the tank. Watch TV programmes till evening dinner time.

Exercise time is at 1000h. I don't go out for exercise. I haven't gone out for exercise for about five years. What is the point?"

Sanitation

Across all prisoner categories, condemned prisoners have the least access to water and sanitation facilities. In the study, 51% of male condemned prisoners stated they do not have access to toilet facilities as they wish.⁶⁴⁴ In WCP and MCP where prisoners are housed in cell wards, each cell is locked during lock-up time, i.e. in the evening for the entire night, and individual cells do not have toilets inside the cell. In WCP, the Commission observed in WCP cell wards in Chapel that when prisoners are bathing from the tank or use the toilets, water spills out and seeps to the corridor and in some cases to the nearby cells. In addition, when

⁶⁴³ Polin is the prison term used for prisoners lining up for roll call at unlock and lock up times.

⁶⁴⁴ For a detailed discussion on sanitary facilities available to condemned prisoners, please refer chapter Water, Sanitation and Personal Hygiene.

convicted prisoners housed in the upstairs wards of Chapel use the toilets, water drips from damaged drainage pipes and cracks on the wooden floor to the condemned cells below on the ground floor.

Treatment by officers

The Commission observed that almost all prison officers who were interviewed for the study and officers the Commission meets during its frequent monitoring visits to prisons, have empathized with the conditions of the condemned prisoners.⁶⁴⁵

SSP T. I. Uduwara, SP of WCP, where the largest number of condemned prisoners are housed, stated, “they are just stuck in their dark cells. Living like that for ten, fifteen, twenty years, people can go crazy. People get old, they get sick, they die.” He further stated:

“Look at the problems with our justice system. Let’s say a man kills someone in the heat of passion when he was twenty-five years old, the case drags on and on and on until the man is like sixty years old when the death penalty is finally pronounced. It takes like twenty, twenty-five years now to give a sentence. Then the man goes to appeal and has to wait for at least ten more years. What’s the point of the justice system then? I don’t see any justice to the murder or the victim’s family in this.”

In the study sample, 65% of male and 73% of female condemned prisoners stated that the officers treat them with respect and dignity. In addition, 83% of the male and 91% of the female condemned prisoners stated they have not experienced violence or ill treatment at the hands of a prison officer. One condemned prisoner from WCP stated that, “officers don’t treat condemned people badly. Officers treat short term prisoners badly. Don’t treat condemned people badly as it would cause troubles to the officers. If [we have a problem] Kamara party would tell CJ – they will ask what happened – [CJ] will [then] visit Chapel.”

Another condemned prisoner who had been in the Chapel cell wards for thirteen years stated: “Officers try to be nicer to the people in the cells in Chapel... [Condemned] Prisoners also don’t go to fight with the officers, officers also avoid inciting the prisoners. Everyone has been living the same life for many years now...Officers try to help prisoners from the [Chapel condemned] cells if there is a request, if it’s something they can do.” As a male condemned at ACP expressed it:

Unlike with other convicted prisoners and remand prisoners, officers don’t treat condemned prisoners badly. I think they feel sorry for us. Some officers joined as guards here and have become jailors now. They see us, being in the same place for years and years. Maybe they will retire and I will still be stuck here.”

⁶⁴⁵ For a detailed discussion, please refer chapter Inmate-Officer Relationship.

4.2. Mental health issues faced by condemned prisoners

The uncertainty of whether or not you might be hanged by the order of the executive tomorrow or next month or in a couple of years creates severe mental anguish, as was observed by the Commission during the study, especially through the qualitative data and the letters of the condemned. The prolonged time in detention compounds the unrelenting mental strain of living in fear of execution, with the bare minimum of facilities fit to live. Studies have shown that protracted periods spent on death row in confinement can make inmates suicidal, delusional and insane⁶⁴⁶, which is also reflected in the data gathered during this study.

78% of male and 33% of female condemned prisoners stated that feelings of anxiety, depression and sadness interfere with their daily functioning. In addition, 12% of male and 6% of female condemned respondents stated they have self-harmed, while a statistically significant number of male condemned prisoners stated that they have thought about committing suicide. 9% of male condemned prisoners and 10% of female condemned prisoners stated that they have attempted to commit suicide while in prison.

The death row syndrome and death row phenomenon are well studied concepts that describe the conditions of condemned prisoners. The death row phenomenon is the legal term used to describe the experiences of those sentenced to death when living in harsh conditions for prolonged periods of time.⁶⁴⁷ The death row syndrome is a term used to describe the psychological conditions of prisoners on death row, which is yet to be studied in depth by psychologists.⁶⁴⁸

The death row phenomenon describes the dehumanizing and traumatic effects of the lack of social interaction that living in a dark confined space for decades at length may lead to. It includes:

“the loss of ability to initiate behaviour of any kind – to organize their own lives around activity and purpose... chronic apathy, lethargy, depression, and despair often resulted. In the extreme cases, prisoners may literally stop behaving, becoming essentially catatonic. Psychotic disturbances, anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia and psychosis and self-harm. Isolation can exacerbate previous mental conditions or illnesses, as well as other health problems.”⁶⁴⁹

The UN Human Rights Committee has recognized the death row phenomenon as a possible breach of Article 7 of the ICCPR, which states no one shall be subjected to torture or to cruel,

⁶⁴⁶ Amnesty International, “Will this Day be My Last?” - The Death Penalty in Japan’ 7 July 2006, ASA 22/006/2006 <www.refworld.org/docid/44c60a824.html> accessed 24 November 2018

⁶⁴⁷ United Nations Office of the High Commissioner for Human Rights, ‘Moving away from the Death Penalty: Lessons in South-East Asia (2013), p 15.

⁶⁴⁸ Amy Smith, ‘Not “Waiving” but Drowning: The Anatomy of Death Row Syndrome and Volunteering for Executions’ (2008) 17 Public Interest Law Journal, 237

⁶⁴⁹ ibid

inhumane or degrading treatment or punishment.⁶⁵⁰ The Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in 2012 at the UN General Assembly Third Committee (Social, Humanitarian and Cultural) stated that conditions on death row contributed to irreparable physical and mental harm, and pointed to the death row phenomenon becoming a growing subject of focus in international jurisprudence.⁶⁵¹

In a landmark judgement in 2014,⁶⁵² the Indian Supreme Court held that the psychological distress experienced by death row inmates due to long delays in mercy petition appeal,⁶⁵³ where the person is on death row for years, can amount to cruel and degrading treatment and/or punishment. This judgment also discusses the deterioration of mental conditions of a prisoner on death row, effectively recognizing the death row syndrome, even though the judgment does not specifically mention the syndrome by name.

While the death row phenomenon is the cumulative effects of the harmful conditions of the death row, the death row syndrome is the distinct manifestation of the psychological illness that can occur as a result of the phenomenon.^{654,655} While medical professionals are required to diagnose the condemned prisoners suffering from the death row syndrome, qualitative data gathered during the study indicates that prisoners on death row are suffering from the death row phenomenon, which should be further confirmed scientifically by thorough psychological studies. Possible experiences of the death row phenomenon/syndrome are described by condemned prisoners in the study as follows:

"I never go out for the exercise time, for about five years. I used to go to the mosque on Friday earlier but since the last three to four years I don't go to the mosque either. I didn't even go there during fasting time. If I go, they will ask me: why did you not appeal, they will ask about my case, they will talk about how the other two [co-defendants] got a re trial from the Court of Appeal. Even when going to the mosque, people talk about these things. It is very depressing to talk about these things, so why should I go? I'm not involved in any prison activity or rehabilitation program or classes, there is no point. There is no purpose in going out [of the ward]. I just keep to myself.

⁶⁵⁰ UN General Assembly, 'Capital Punishment and the Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty' (22 August 2017) A/HRC/36/26 <www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session36/Documents/A_HRC_36_26_EN.docx> accessed 20 November 2018

⁶⁵¹ UN General Assembly, 'In Third Committee, Special Rapporteur on Torture Calls on States to Seriously Reconsider Whether Death Penalty Amounts to Cruel, Inhuman Treatment' 23 October 2012, GA/SHC/4046 <www.un.org/press/en/2012/gashc4046.doc.htm> accessed 27 November 2018

⁶⁵² Shatrughan Chauhan & Anr. V. Union Of India & Ors. [2014] Insc 44 (21 January 2014)

⁶⁵³ For a detailed discussion of Mercy Petitions, please refer chapter Early Release Measures.

⁶⁵⁴ | [Karen Harrison. and Anouska Tamony \(2010\). "Death Row Phenomenon, Death Row Syndrome and their Effect on Capital Cases in the US". November 2010. Internet Journal of Criminology,](http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.371.5070&rep=rep1&type=pdf) <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.371.5070&rep=rep1&type=pdf>

⁶⁵⁵ "Designed to break you. Human rights violations on Texas' death row" Human Rights Clinic, University of Texas School of Law, April 2007, <https://law.utexas.edu/wp-content/uploads/sites/11/2017/04/2017-HRC-DesignedToBreakYou-Report.pdf>

My family used to come for open visits earlier. They don't come anymore. I only call them about two to three times a year from the phone booth. I don't know what to say to them. If I call them, I have to tell them something and they will ask questions. When are you coming home? I don't have any answers. So, to make everyone's lives easier, I don't talk to them.

What's the point of being in pain and sadness every day? In addition, giving that pain and sadness to people at home? If there is no solution, there is no point in discussing the problems that exist.

I am on medication for a mental illness. In 2017 it got severe and they sent me to PH."

Male condemned prisoner, WCP
Thirteen years on death row, never appealed

"Because of this I have become a mentally ill person now. I have become sick and live with a multitude of illnesses. Pressure, diabetes, hernia, cholesterol etc. not just that, having spent twenty years in these dark cells my eye sight has weakened – I cannot even read and write, or take care of my daily needs properly. Being a sick person, it is very difficult to live in a tiny dark cell with three to four other people."

WPC/DP/S/82

"There are doctors who come here, those who treat people in the mental hospital. They come once a month and provide treatment. Since 2015, I am taking medicine for it [mental illness]. My memory power has reduced a bit. I can't remember things. I was admitted to the hospital and they [doctors] asked me what my illness is. I told them I can't remember things. So now I'm on medication."

Male condemned prisoner, WCP
Forty-five years old, on death row since 2009

"I thought having spent twenty years as a condemned prisoner and having been a model prisoner with good conduct I would get a relief from Evaluations and Commutations, but I was rejected by the Commutation Committee. I have fallen even more to the depths of despair after that. I am fed up with this life. There is no one to listen to us. Is there such a thing called human rights?"

WCP/DP/S/2

Sixty-one years old, been in prison since 1987 when he was remanded.
Was granted bail but was unable to post the bail.
Has been on death row since 2003.

"Now I'm all the way in Agunukolapelassa. My family can't come see me anymore. After ten years this is the first time, I'm feeling that I am actually

suffering because of the prison sentence. That this is the actual *achchuwa* [punishment]. The fact that I was punished has entered my soul now. This is the first time I'm far away, isolated from everything. Now I know I'm being punished. There is no more hope. Everything is lost. I'm being punished for other people's sins."

Female condemned prisoner, ACP

"...because of that I was given medication for mental illness. I am taking four different kinds of medicine – five pills. Some of them are for sleeping. I go to the mental health clinic once a month in Welikada prison. Now for three years I'm on medication for mental health. First, they gave me one and ¼ pills, now they give me five pills. They increase the number of pills because after some time they stop working [increases the dosage]."

WCP/DP/S/24

In the study, 43% of male condemned prisoner respondents and 61% of female condemned prisoner respondents stated they requested medical treatment in the past year. Table 19.5 and 19.6 illustrate the frequency of requests for medical treatment, which indicate the likely adverse impact of the living conditions and the death row phenomenon experienced by the condemned prisoners. Some prison officers, including the then CGP himself, stated to the Commission that condemned prisoners often complain of physical discomfort, which in their experience is a manifestation of the levels of depression these prisoners suffer. Officials further stated that when a condemned prisoner is removed from his/her ward and is housed at the PH or is sent to GH for treatment, even for a short period of time, the change in the environment itself makes the condemned prisoner feel well and they return to the prison expressing that they feel much better. Prison officers stated that therefore they are more understanding of condemned prisoners when they complain of real or imagined ailments. It must be noted that the experience and observations of prison officers distinctly points to the death row phenomenon, as the conditions of the death row itself, trigger other physical and psychological ailments. This in turn highlights the importance of the experiences and observations of prison officers in understanding the conditions of condemned, and other prisoners.

Table 19.5 – Male and female condemned prisoner respondents who required medical attention in the past year

Number of times	Male condemned prisoner	Female condemned prisoner
1-5 times	15%	18%
>5-10 times	6%	9%
>10-20 times	14%	18%

Common illnesses suffered by condemned prisoners, in our sample, for which they are on medication is illustrated by table 19.6.

Table 19.6 – Illnesses suffered by male and female condemned respondents

Types of illness	Male	Female
Diabetes	11%	27%
Gastroenterological illnesses	11%	8%
Heart diseases	8%	9%
Bone fracture related	5%	-
Respiratory related	3%	9%
Cholesterol	-	9%
Orthopaedic illnesses	5%	9%
ENT related illnesses	3%	-
Blood pressure related illnesses	3%	18%
Kidney disease	3%	9%
Eye related	2%	-

Mr. H.M.N.C. Dhanasinghe, then CGP, who has had decades of experience in the prison department as a prison officer, in one of his meetings with the Commission, explained that the dire conditions experienced by death row prisoners would undoubtedly result in effects described by the death row phenomenon. Mr. Dhanasinghe stated:

“if I was a condemned prisoner living in [WCP] chapel I will also have one hundred illnesses. Diabetes, cholesterol, joint pain, cancer, lung disease, going blind. All sort of things. [You can] put the healthiest man in the country in chapel cells and see how sick he will be in one month.”

5. The stigma faced by the families of condemned prisoners

The consequences of the imposition of the death penalty have far reaching implications on society. There is very little social science research in Sri Lanka to assess the impact of the imposition of the death penalty on families – both the victims' family and the perpetrators' family. The societal view of punishment for a crime often extends to the families of the perpetrators of crimes, who are made to bear social and economic repercussions for a crime committed by a family member. Families of prisoners may be deemed to be less deserving of compassion and may also be blamed for having played an indirect role, or might be made responsible for the actions of the perpetrator, and consequently be victimized.

Most condemned prisoners shared that their partners have left them, and their children are in the care of their elderly parents. In some instances, they did not have anyone to care for their children and who were therefore sent to children's homes. It must also be pointed out that condemned prisoners are barred from accessing opportunities such as work release scheme, which allow them to earn an income during their time in prison and provide financial assistance to their family members. The fact that their family members are without

a breadwinner and the resultant financial hardship is the most cited cause of grief for condemned, and other long-term prisoners as illustrated by the narratives of prisoners set out below:

"After I was imprisoned, my wife left me and our eleven-year-old son. My son is today with my sixty-nine-year-old mother and seventy-three-year-old father. They are too old and sick to take care of my son, and have no fixed income. I don't have brothers but have three younger sisters. The entire family was dependent on my hard-earned money. Today, every one of them is helpless."

WCP/DP/S/7

"I am here for the last twenty years. At least I get food some kind of food three times a day. Who will look after my family? Our families are the ones that are affected in the end. Our children can't go to school, they don't have enough food to eat. If a married man goes to jail, imagine the plight of his family. There should be a limit to the punishment they give. People have the ability to reform, but if you keep them inside for so many years, they won't. A lot of prisoners I know tell me what is the point of leading a good life now, I might as well sell ganja and survive. I need to send my family money. They need to survive."

Condemned Prisoner, WCP

"I have not heard from my wife and child in five years and seven months. I am worried about what had happened to them. My wife is illiterate and can't even read the name board of a bus and lives in a very rural area in Hambantota. They don't know to get on a bus and come to Welikada. My wife's daughter from her previous relationship, XX, was raped by a man and was sent to a probationary home in Badulla. This had happened when I was in remand. They don't know to come to a big city like Colombo. Can you please find out whether they are okay? Do you think you can bring them here so that I can see their faces? Can you please assist them because they are dirt poor? Please do so from the humaneness in your heart."

WCP/DP.A/S/2

"There is no government assistance to my family. They have no proper income. There are times they are not able to eat even one meal a day. The youngest child is suffering from malnutrition. I have written to Ministers and Members of the Parliament but have obtained no relief from them. [My family] doesn't even have a proper house to live. More than me, it is my two children and wife that are suffering because of this punishment. If you don't trust me, please go and visit my home. This is the address XX."

WCP/DP.A/S/86

The UN Committee on the Rights of the Child dedicated its 2011 Day of General Discussion to the theme of "Children of Incarcerated Parents."⁶⁵⁶ The Recommendations of the Committee highlight the need for detailed research to comprehend the specific difficulties faced by the children whose parents are accused of a capital crime, of those who are on death row or of those who are/will be executed because while children have had no part in their parents' purported crimes, they are often directly impacted by it.

The Commission was made aware that children of condemned prisoners often face systemic discrimination in accessing livelihood and employment opportunities. Especially in situations where a son or a daughter of a condemned prisoner wants to join law enforcement or the military or any other state institution, they are prevented due to the fact that 'their father/mother is a condemned prisoner'. In occupations where police clearance reports are mandatory, by stating the father's death row conviction in children's police reports, the police inadvertently violate the right to a dignified life and work. Stating a parent's convictions in the police reports issued to their children results in limiting the career opportunities of these individuals, especially in law enforcement, as they would then not be recruited. For example, a male condemned prisoner from WCP alleged that his son who had applied for a position of an Administrative Assistant in Galgagedera Hospital, Galle and his daughter who had applied to entry level positions at the Bank of Ceylon and the Cooperative Rural Bank were rejected at the interview stating that, "Your family has an issue, doesn't it? Your father is a condemned prisoner. Sorry we can't do anything for you." It is important to note that all three are public institutions. Another prisoner on death row, expressed it thus:

"Our children's rights have been gravely violated by the OICs of police stations because when issuing police reports they state the father is a condemned prisoner. Children have not been able to get jobs in the state sector and the private sector. Please can you do something? What crimes did our children commit? Please don't punish them for our sins. I humbly beg you, please don't hold our innocent children responsible for their father's sins."

WCP/DP/S/66

The identification of the condemned status of one's parent points to an assumption that the tendency to commit crimes can be genealogical, which is a gravely regressive approach to crime and punishment in a civilized society. This socially stigmatizes a person and violates his/her rights to live a dignified life in the society without being held responsible for the crimes of their parents. A female prisoner sentenced to death for the murder of her abusive husband who was worried about whether the stigma will jeopardize her relationship with her children expresses it as follows:

"The hardest thing about being a condemned woman is not being able to see my children. Last time when they came to see me, I couldn't even identify them. I saw my mother and was looking behind her to see who else

⁶⁵⁶ United Nations Human Rights Office of the High Commissioner, 'Day of General Discussion "Children of incarcerated parents" 30 September 2011 - 10:00 a.m. to 7:00 p.m. Salle XVII, Palais des Nations' (2011) <www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2011.aspx> accessed 20 November 2018

had come. I saw two tall men standing behind my mother. I was so shocked to realize they are my children. Maybe they don't want to come and see me... Maybe they are ashamed of me."

6. The abolition of the death penalty

'In considering the social wisdom of the abolition, limitation or modification of capital punishment there may be a divergence between the political practicability of a given course of action and the social wisdom of that course. It seems to us that there is clear duty on us to concentrate on the latter.'

Report of the Commission of Inquiry on Capital Punishment
[The Morris Commission]
1959

The need to abolish the death penalty in Sri Lanka was discussed as early as 1928, when D. S. Senanayake proposed to the Legislative Council of Ceylon [parliament] that, 'capital punishment be abolished in Ceylon and the necessary amendment in the law should be introduced at an early date.' Consequently in 1936 and in 1955 Members of Parliament presented motions to abolish capital punishment. While presenting the Suspension of Capital Punishment Bill to the parliament in 1956 Mr. Samaraweera, Parliamentary Secretary to the Minister of Justice, quoted the Belgium Minister of Justice in 1929, 'the average of capital sentences has never been higher than it was when the instrument of capital punishment was actually in use. The lesson has been learnt that the best means of inculcating respect for human life is to refrain from taking life in the name of law.'⁶⁵⁷ Mr. Samaraweera further stated that, '... this aspect of the matter was placed before my Ministry by certain Judges of the Supreme Court who felt that there would be fewer miscarriages of justice, that is, guilty men would have less chance of getting away completely free if the death penalty were abolished and in its place a sentence of life imprisonment were imposed.'⁶⁵⁸

In 1956, various Members of Parliament, during the parliamentary debate on the Suspension of Capital Punishment Bill, argued that since both the retentionists and abolitionists have arguments on the deterrence value of the death penalty, the government, by suspending capital punishment for certain period, would have the opportunity to study the effects of it and find scientific answers to the question of deterrence. Highlighting the importance of prudence in government policy-making, Mr. D. B. R. Gunawardana, MP, stated, 'with the best will in the world, we will be discussing moral problems, but surely in a matter like this it is the facts that are important. Let us at least take the first steps of trying to establish what the facts are.'⁶⁵⁹ Hence, the Morris Commission, which will be discussed further in this section, was appointed, after the parliament passed the bill on suspending the capital punishment.

⁶⁵⁷ Hansard 17 May 1956, pg 545

⁶⁵⁸ Hansard 17 May 1956, pg 545

⁶⁵⁹ Hansard, 17 May 1956, pg 566

The Human Rights Commission, as per its mandate to advise and assist the government in formulating legislation and administrative directives and procedures in the furtherance of the promotion and protection of fundamental rights, has on multiple occasions made recommendations to the government to abolish the death penalty. Most recently, on 13 July 2018 the Commission wrote to the President expressing its grave concerns about reports of plans to re-implement the death penalty, explaining its position in detail. On 1 January 2016 the Commission wrote to the President stating that:

'Sri Lanka should demonstrate its commitment to the sanctity of life and fundamental human rights principles by joining the more than hundred nations in the world that have abolished the death penalty thus far. 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;

Many proponents of the implementation of the death penalty have urged its implementation as a deterrent 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.

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.

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 always the possibility of human error distorting the final outcome.

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.'

Furthermore, in October 2018 during arguments on the petitions filed challenging the constitutionality of the new Counter Terrorism Bill (CTB), then Additional Solicitor General Yasantha Kodagoda, stated that, 'Imposing the death penalty is the most serious violation of Art. 11 of the Constitution, in view of contemporary law, and that under the current legal

system if post judicial review is allowed, capital punishment must be abolished.^{660,661} Moreover, the National Human Rights Action Plan (2017-2021) of Sri Lanka states that the right to life should be explicitly recognized and that the Fundamental Rights Chapter of the Constitution should be amended to include the right to life. In doing so, the State has recognized the importance of right to life which can only be achieved through abolishing the death penalty.

The UN Human Rights Committee in *Anura Weerawansa v Sri Lanka* has also observed that imposing a moratorium on executions is not adequate and the very imposition of the death penalty as a punishment violates a person's rights under Art. 6 (1) of ICCPR. Further, the Committee found that 'the deplorable conditions of detention of condemned prisoners' violated Article 10 (1), i.e. his right to be treated with humanity and with respect for the inherent dignity of a person. The Committee found that Sri Lanka has an obligation to provide the complainant with effective and appropriate remedies, including commutation of sentence, compensation, and to be treated with humanity and dignity while in prison. The Committee further reiterated Sri Lanka's obligation to take measures to prevent any similar violations occurring in the future.⁶⁶² It stated that mandatory death penalty does not allow mitigating factors and the circumstances of the case to be taken into account, and thus fails to meet the standards of limiting the death penalty to the 'most serious crimes.'⁶⁶³

Highlighting the need to abolish the death penalty, Dr. L.B.L. Alwis, an experienced Sri Lankan JMO by profession writes⁶⁶⁴:

'As a JMO working in the MOH for thirty-two years, I have given evidence in several hundreds of murder trials where the accused may very well have been sentenced to death. However, I am much relieved that such death sentences have not been executed.'

In South Asia, India amended the Penal Code in 1973 to require judges to state their reasons for the imposition of a sentence of death as opposed to other types of punishment.⁶⁶⁵ This is of particular relevance because the jurisprudence of the Indian Supreme Court is referred to by the Sri Lankan judiciary. It should be noted that in 1980 the Indian Supreme Court struck

⁶⁶⁰ Anurangi Singh, 'Arguments and Counter Arguments against Counter Terror Bill' *Sunday Observer* (Colombo, 21 October 2018) <www.sundayobserver.lk/2018/10/21/news/arguments-and-counter-arguments-against-counter-terror-bill> accessed 21 November 2018

⁶⁶¹ Additional Solicitor General Yasantha Kodagoda stated this in reply to the argument on the lack of provisions for capital punishment for murder and attempted murder under the new counter terror bill while the domestic law provides for the capital punishment for both offences. This argument was made by President's Counsel Manohara de Silva appearing on behalf of Wimal Weerawansa.

⁶⁶² ibid

⁶⁶³ Human Rights Committee, *Anura Weerawansa v Sri Lanka*, 17 March 2007, U.N. Doc. CCPR/C/95/D/1406/2005 <www.worldcourts.com/hrc/eng/decisions/2009.03.17_Weerawansa_v_Sri_Lanka.htm> accessed 20 November 2018

⁶⁶⁴ De Alwis L.B.L (2018), "The need to abolish the death penalty", Sri Lanka Journal of Forensic Medicine, Science & Law-May 2018-Vol.9 No.1

⁶⁶⁵ <https://www.amnesty.org/download/Documents/52000/asa200072008eng.pdf>

down mandatory death penalty for murder in the Penal Code as being unconstitutional as it violates the right to life recognized in the Indian Constitution. In *Bachan Singh v State of Punjab*, the Indian Supreme Court stated that the death penalty should only be imposed in the ‘rarest of rare cases’ as mandatory death penalty is unconstitutional, and that life imprisonment should instead be the norm. This made death penalty an exception and further required trial judges to provide reasons as to why the death penalty is being imposed as opposed to life imprisonment or any other punishment. The Indian Supreme Court in many instances ‘commuted’⁶⁶⁶ capital punishment imposed by trial judges, and in other instances has forwarded certain cases to the President of India for Mercy Petitions⁶⁶⁷. One of the several factors considered by the Indian Supreme Court in ‘commuting’ the death sentences of petitioners was the long delay between the imposition of the death sentence, the hearing of the appeal^{668,669}, and mercy petitions being considered by the President.⁶⁷⁰ Similarly, in 2012 the Indian Supreme Court held in *State of Punjab vs Dalbir Singh* that mandatory death penalty in the Arms Acts of India is unconstitutional, prompting the legislature to initiate a bill to amend the Act. The jurisprudence of the highest court of law in India has, therefore, prompted the Indian parliament to work towards the abolishment of the death penalty.

6.1. The fallacy of the deterrence argument

To date, the only study that had been conducted to evaluate the deterrence value of the death penalty was by the Commission of Inquiry on Capital Punishment, also known as the Morris Commission, appointed in October 1958 by the Parliament of Sri Lanka. The Commission consisted of Dr. Norval Morris, Dean of the Faculty of Law of the University of Adelaide, the Chairman, and members Sir Edwin Wijeyratne, a former Minister of Home Affairs and Professor T. Naderaja, Dean of the Faculty of Arts and Head of the Department of Law at the then Ceylon University. Mr. S. Canagaraya was the Secretary to the Commission. The Morris Commission found that there was no evidence to prove that the death penalty acts as a deterrent to crime any more than long-term imprisonment. Since then there have been no studies conducted in Sri Lanka to assess whether the death penalty has a deterrent effect and curbs crime.

Comprehensive studies conducted in other parts of the world, such as the United States, where the imposition of the death penalty is subject to heavy scrutiny, indicate that there is overwhelming evidence to support that the threat of or the use of the death penalty does not have a deterrence effect.⁶⁷¹ Leading criminologists believe that the death penalty does little

⁶⁶⁶ As the Indian Penal Code allowed for death penalty, life sentence or other terms of imprisonment, many persons who had been given the death sentence received a life imprisonment or other terms of imprisonment from the Indian Supreme Court, when they appealed.

⁶⁶⁷ For a detailed discussion on Mercy petitions in India and the equivalent in Sri Lanka, please refer chapter Early Release Measures.

⁶⁶⁸ *Shanker v. State of Uttar Pradesh*. (AIR 1975 SC 757)

⁶⁶⁹ *T.V. Vatheeswaran v. The State of Tamil Nadu* (AIR 1983 SC 361)

⁶⁷⁰ *G. Krishta Goud and J. Bhoomaiah v. State of Andhra Pradesh and Ors.* [(1976) 1 SCC 157]

⁶⁷¹ Michael L. Radelet and Traci L. Lacock, ‘Do Executions Lower Homicide Rates? The Views of Leading Criminologists’ (2009) 99(2) The Journal of Criminal Law & Criminology <<https://deathpenaltyinfo.org/files/DeterrenceStudy2009.pdf>> accessed 14 December 2018

to nothing to reduce crimes.⁶⁷² Instead, ensuring the effectiveness of the justice system and a just social order lead to crime reduction, instead of the imposition or the implementation of the death penalty. In addition, although the popular belief is that the death penalty works in curbing crime and is an apt punishment for what the public perceives to be serious crimes, it is founded on the public misperception of an ever increase in crimes, as illustrated by studies which analysed the average murder rates for all countries. According to this study, India for instance has seen a decrease in murder rates by 23% for the period 1995-2011, a period in which executions were suspended from 2004.⁶⁷³ Pakistan on the other hand experienced a slight increase in murder rates, despite having the death penalty.⁶⁷⁴ According to the 2017 statistics presented by the Sri Lanka Police to the Parliament there has been a "considerable decline" in grave crimes, including homicide.⁶⁷⁵ This is validated by the performance reports of Sri Lanka Police published on the Parliament website, which illustrate a steady decline in grave crimes over the years.

The deterrence argument rests on the assumption that capital punishment can act as a unique deterrence as 'man, at nearly all costs, desires to preserve his life.'⁶⁷⁶ This argument presupposes that a person would logically calculate the costs and benefits of committing a crime in the light of the punishment for such offence prior to committing it. As stated in the Morris Report⁶⁷⁷, 'the difference between [execution and protracted imprisonment] is unlikely to prevent the carefully planned murder – the perpetrator of which plans to avoid detection.' The threat of the severity of punishment therefore is not an obstacle for perpetrators who are confident that they will not be apprehended, prosecuted and convicted. The key to deterrence therefore lies in a strong criminal justice system, which creates a high probability that perpetrators will be made accountable. This also requires improving the efficiency of law enforcement and improving public confidence that crimes will be investigated impartially and professionally without delay.

The following statement made by Mr. P.G.B. Keuneman, Member of Parliament, during the Parliamentary debate on the bill to Suspend Capital Punishment in 1956 continues to be relevant because it underscores the importance of understanding the underlying causes of crimes, which will have more impact on curbing crime, than merely expecting stricter punishment in itself to act as a deterrent:

"It was my unfortunate and harrowing experience to be the foreman for a jury in a murder case in which the entire dispute which led to the murder was about a strip of land...[which] contained twenty manioc plants...according to

⁶⁷² ibid

⁶⁷³ Amnesty International, 'Not Making Us Safer: Crime, Public Safety and Death Penalty' (October 2013), p 9 <www.amnesty.nl/content/uploads/2016/11/act510022013en.pdf?x93624> accessed 19 November 2018

⁶⁷⁴ UN Office on Drugs and Crime, 'UNODC Homicide Statistics 2013' <www.unodc.org/unodc/en/data-and-analysis/homicide.html> accessed 19 November 2018

⁶⁷⁵ Sri Lanka Police Performance Report 2017 in <http://www.parliament.lk/uploads/documents/paperspresented/performance-report-srilanka-police-2017.pdf>

⁶⁷⁶ Report of the commission of inquiry on capital punishment, pg 38

⁶⁷⁷ Morris Report, Chapter III Abolition or Reintroduction, page 38

the strict letter of the law that man was a murderer: but I felt that the real murderer in that case was a society which allowed such a condition to exist that one man could take the life of another because twenty manioc plants were of such great moment and such vital importance to the continued existence of himself and his family.

...I have spoken to some of them [prisoners on death row] on certain occasions in the capacity of a prison visitor [Prison Visitor's Board], and on one or two occasions, because the people involved happened to be people whom I knew. I tried to find out what had driven them to this act which ended for them to murder, what had driven them to this act which ended them on the gallows. In certain cases, it was a momentary unbalance. Other cases were pathological; people who, in my opinion were really subjects for a psychiatrist and not for a judge. In other cases, the reasons were basically social or economic."

The letters of condemned prisoners further evince the notion that that a majority of condemned prisoners are convicted of crimes that are not premeditated but committed as a result of sudden provocation/heat of passion. Hence, the death penalty will not serve as a deterrent in such instances. Overwhelming qualitative and quantitative data in the study illustrate that the majority of crimes that carry the death penalty were committed in the spur of the moment, which has been studied and highlighted in other countries as well.

This also underscores the point that the overwhelming majority of those who are on death row may have never had a history of criminality. For example, 100% of female and 94% of male condemned prisoners stated in the questionnaires that this is their first time in prison, highlighting the fact that the overwhelming majority of those who receive the death penalty may not have had a history of criminality. Similarly, the qualitative data validates the quantitative data as illustrated by the narratives below:

"My livelihood was based on transporting coconut branches and selling them. I had a cart with two cows and my entire livelihood depended on that. One day in the evening I took the two cows to the river, fed them grass and water and tied them to a tree and left them to graze. When I later came to check up on them, I saw that one cow was bleeding from the hind leg. I also found nearby a toddy pot broken into pieces. I went to the pharmacy and bought some medicine for the cow and since I knew to whom the toddy pots belonged, I went to confront him. He was drunk and coming home with a friend when I confronted him. He said my cow stamped on his toddy pots and started waving a knife at me saying 'I will cut you like I cut your cow.' I was so angry and struggled with him. Both of us fell and by accident he was stabbed. His friend ran away, and I ran away too.

Later the police arrested me, and I was remanded. I was granted bail after two months and ten days and when I came home, I saw that the cow that was injured had become disabled because an artery was cut. At the end, I also lost

my livelihood. Because there was no other way to feed my wife and children, I had to go find work in faraway places as a labourer.

Once when I came home, my wife told me I had received summons from court. I did not have money for a lawyer either. At the end, the court heard the case without me, and the death penalty was given to the chair [in absentia] in 2004.

In 2011, I was arrested and kept in remand for one hundred days and the judge in High Court of Kegalle read out the verdict against me. Today I am on death row waiting to be hanged."

WCP/DP/S/60

"I don't know how many people are here for contract killing, for well-planned murders but I know about people who are here because they could not stand their wife being sexually harassed, because they fought for their piece of paddy land, for their half of the boundary, for grazing the cow in another's field, killed for having stolen their chickens, for asking money for their alcohol addiction. These are the people on death row. We will have to hang half the country one day."

WPC/DP/S/77

There are two crimes for which most of those on death row in Sri Lanka have been convicted, murder and drug trafficking. In relation to murder, evidence from countries where centralized data systems exist demonstrates that recidivism for murder is amongst the lowest of all types of offences. Data collected from Australia and many other commonwealth countries by the British Royal Commission on Capital Punishment has reported that the majority of prisoners released after having served a prison sentence for murder, behaved well after leaving the prison. They were not regarded as the type of prisoner with a likelihood of reoffending.⁶⁷⁸

The justification for the re-implementation of capital punishment for those who have been convicted of drug trafficking and are currently on death row is its deterrent effect on those who engage in the trafficking and sale of drugs. However, the imposition of the death penalty and executions have a negative impact on attempts to curb drug smuggling, which heavily depends on information sharing between countries. In this regard, according to the UNODC, much of the drugs trafficked to Sri Lanka come through maritime routes, and hence if action is not taken through international cooperation to obtain information from and collaborate with other countries, the influx of drugs into Sri Lanka cannot be stopped. Yet, one of the main shortcomings in curbing the influx of drugs is the lack of regional and international cooperation. This is due to the fact that countries that are de jure and de facto abolitionist states share intelligence only on the condition that prosecution does not lead to capital punishment. Sri Lanka is part of the UNODC network because of the de facto moratorium but

⁶⁷⁸ Ivan Potas and John Walker, 'Capital Punishment' (February 1987) Australian Institute of Criminology <<https://aic.gov.au/publications/tandi/tandi03>> accessed 21 November 2018

will no longer receive any intelligence if the death penalty is re implemented. Shanaka Jayasekera, UNODC representative in Sri Lanka, stated the following:

"Sri Lanka's death penalty is an impediment to the sharing of intelligence between countries. Countries that do not have the death penalty like Australia are reluctant to share their intelligence with Sri Lanka because of the provisions to sentence people to death [when arrested and charged within Sri Lankan territory], and the threat of re implementing the death penalty."

The battle against the influx of drugs into Sri Lanka, and hence internal trafficking and sale is not possible without high levels of cooperation with countries that can share good practices and provide technical expertise and state-of-the-art technology. Hence, the abolition of the death penalty will strengthen attempts to prevent Sri Lanka becoming a regional hub for drug trafficking.

The deterrence argument, which bolsters public support for the death penalty, is also shaped by the media. The Morris Commission as early as in 1956, when, unlike today, the influence of the media was restricted to mostly print media, pointed to the factual inaccuracies of media reporting that not only misled the public, but also judges, lawyers, police officers and policy makers regarding the need for and the effectiveness of the death penalty. The Morris Commission stated that:

'We found that a factual basis for opinions of many of our witnesses was either lacking or distorted, and therefore that the segment of public opinion brought to our attention was not determinative of the social wisdom of abolition or retention. Where public opinion is neither informed nor clearly ascertained, the social wisdom of a suggested legislative step must be determined by reference to considerations other than the belief of the public in the wisdom of that step.'⁶⁷⁹

This rings true more than sixty years later as illustrated by the remarks of DIG Ajith Rohana who spoke of the case of Seya at a public event organized by the Bar Association of Sri Lanka on Arrests and Detention under Normal Law and the Prevention of Terrorism and Emergency Regulations laws on 14 June 2019. Seya was a four-year-old girl who was abducted, raped and brutally murdered in 2015, leading to a public outcry including demands to hang the culprit and those on death row as an example. DIG Ajith Rohana claimed that the police were pushed into a corner by the media frenzy, the public outcry and the pressure from superior officers to find the culprit. He stated that when mainstream media and social media named a person named *Kondaya* as a possible suspect, the police were forced to act as "thousands of people surrounded the police station and demanded that *Kondaya* be arrested and prosecuted." DIG Ajith Rohana said, "even when the police knew that there was no credible evidence to arrest *Kondaya*, we had no choice but to do it because that's what the public demanded." It should be noted that when *Kondaya* was arrested the Police Department's spokesperson at the time explained *Kondaya's* culpability in the media

⁶⁷⁹ Report of the commission of inquiry on capital punishment, pg 14

several times, and the crime scene re-enactment by *Kondaya* was widely covered in the media.

6.2. Issues in the criminal justice process

The fundamental argument for the abolition of the death penalty rests on the premise that no justice system operates without inherent structural weaknesses that prevent an accused from the full enjoyment of their due process rights. Prolonged delays in the trial process, lack of access to legal representation and legal aid and the disproportionate conviction of persons from lower socio-economic classes, all point to the imperfections of the criminal justice process. Even in a system where such shortcomings do not exist there is always a risk of wrongful convictions that threaten the integrity of a legal system and warrant safeguards such as appeals, to operate as a safety net. Thus, within this context there is a need to recognise that an irreversible punishment with such finality as a sentence of death that cannot be rectified should not be imposed.

In addition to the quantitative and qualitative data upon which the study is based, the Commission also requested condemned and condemned prisoners on appeal who are housed at WCP to write in depth letters detailing their cases and the judicial process. 375 prisoners participated in this exercise. A thorough analysis of the issues recurring in the letters submitted by condemned prisoners, which are discussed below, illustrate the gaps in the criminal justice system in Sri Lanka and hence cast doubt on the infallibility of the criminal justice system.

Meaningful access to legal representation and its impact on the right to a fair trial

Article 14 of the ICCPR⁶⁸⁰ guarantees due process rights, such as the entitlement to a fair trial by a competent, independent and impartial court of law, minimum guarantees of legal

⁶⁸⁰ ICCPR 1966, art 14,

1. All persons shall be equal before the courts and tribunals. Everyone shall be entitled to a fair and public hearing by a competent, independent and impartial court of law. The press and the public may be excluded from all or part of a trial in special circumstances where publicity would prejudice the interests of justice etc; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons is concerned.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him , everyone shall be entitled g minimum guarantees, in full equality: to informed of the charges against him/her, to have adequate time to prepare a defense, to be tried without undue delay, To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing;and to have legal assistance assigned to him, to be able to examine witnesses against and for him/her, to have an interpreter assigned if the language of the court is different, to be free from forced to self incriminate or confess.
4. considering age and the desirability of promoting rehabilitation in the case of juvenile offenders
5. right to appeal and a review of sentence to a higher court when convicted
6. right to compensation when acquitted or pardoned after suffering punishment due to miscarriages of justice
7. Right to be free from being tried again for an offence after being acquitted or convicted once for the same offence

representation and to be tried without undue delay. Article 13 of the Constitution of Sri Lanka also guarantees similar rights.

Since the death penalty is irreversible the underlying assumption is that guilt was proven beyond reasonable doubt, the conviction was after a fair trial and the individual had access and the means to mount a vigorous defence. To the contrary, the letters of the condemned as well as the qualitative data gathered during the study highlight the lack of access of condemned people to meaningful legal representation, which points to persons condemned to death not being able to fully enjoy their constitutional guarantee to a fair trial.

This data has to be studied in the context of a growing global consensus backed by evidence that the death penalty disproportionately affects the marginalized and discriminated groups in society whose access to legal representation is restricted by the lack of financial means. This is illustrated by the tables below, which set out the socio-economic background of those sentenced to death in Sri Lanka. As per the DOP statistics, table 19.7 demonstrates that a disproportionate number of condemned prisoners are from rural areas while table 19.8 illustrates that majority of condemned prisoners are from low-income backgrounds.

Table 19.7 – Condemned prisoners according to their residence⁶⁸¹

Sector	Year				
	2014	2015	2016	2017	2018
Urban	37	52	69	54	31
Rural	116	134	111	163	137
Total	153	186	180	217	168

Table 19.8 – Condemned prisoners sentenced to death according to their income⁶⁸²

Income	Year				
	2014	2015	2016	2017	2018
Rs.250 & Under Rs.300 per Month	18	90	8	104	13
Rs.300 & Over	134	89	155	99	150
No Income	1	7	17	14	5
Total	153	186	180	217	168

This is buttressed by the qualitative data gathered which highlights that the overwhelming majority of condemned prisoners have a low level of education.

⁶⁸¹ Prison Statistics 2018, p 54

⁶⁸²Prison Statistics 2018, p 55

Table 19.9 – Condemned male and female respondents, education level

Education Level	Condemned Men	Condemned Women
No Schooling	4%	27%
Till Grade 5	25%	27%
Till Grade 8	19%	18%
Till Ordinary Level	40%	18%
Till Advanced Level	6%	9%
Tertiary Education	1%	-

The data reveals that of the male condemned respondents 4% have had no schooling while 25% have had only primary education. Further, of the female condemned respondents, 27% have had no schooling and 45% have only had education up to Grade 8. One male condemned prisoner, in his letter to the Commission detailing the background of the offence, writes, “I only went to grade two in school and learned to match words after I came to prison. If there is something in this letter that you don’t understand, please excuse my mistakes.”

Table 19.10 demonstrates that the overwhelming majority of persons sentenced to death are from disadvantaged economic backgrounds who engaged in unskilled, informal sector occupations or in low pay grade scales occupations in the formal sector.

Table 19.10 – Direct admission of condemned prisoners according to their occupation⁶⁸³

Occupation	Year				
	2014	2015	2016	2017	2018
Cultivators	37	36	29	24	28
Fisherman	15	10	9	15	8
Labour (skilled)	15	-	2	9	38
Labour (Unskilled)	11	33	24	18	15
Tailors	-	2	5	-	-
Carpenters	3	8	6	3	11
Masons	11	4	8	9	7
Craftsmen	-	1	-	-	-
Domestic - Servants	-	3	3	1	-
Waiter	1	-	5	2	-
K.K.S. (Peons)	1	-	-	-	-
Hawkers	3	-	-	7	1
Housewives	-	6	2	7	1
Clerical & Inspector Grades	-	2	1	2	-
Businessmen	4	20	14	15	4
Proprietors	-	-	-	1	-
Professional Grades	-	-	-	5	1
Administrative Grades	2	-	-	1	-
Pensioners	-	3	3	4	1
Students	-	-	-	8	-
Drivers	16	18	16	10	6
Armed Forces	-	2	5	5	2
Police	-	6	4	15	1
UN-employed	16	27	33	12	6
Others	18	5	11	44	38
Total	153	186	180	217	168

⁶⁸³ Prison Statistics 2018, p 57

The narratives of the condemned illustrate that people from economically and socially marginalized backgrounds often do not have access to skilled and competent legal representation despite the serious nature of the offence. Thus, in many cases, the quality of the legal representation appears to have adversely impacted the manner in which the defence was presented which would have adversely impacted the outcome of the case. This is illustrated by the excerpts from the letters of the condemned set out below:

"To represent me for this case in Monaragala High Court we retained lawyer XX who is a resident in Hambantota. He took 250,000 saying don't worry I will get you acquitted, because the judge is a classmate of mine, so I'm sure about this. I didn't have the money, but my siblings raised the amount by pawning their jewellery but in the end, Mr. XX only appeared for three trial dates. He didn't even come for the last ones."

WCP/DP.A/S/75⁶⁸⁴,
Condemned on charges of murder

"The prison filed the intent to appeal for me to the Court of Appeal, but because I did not have money to spend for a lawyer the court appointed a lawyer for me. The lawyer asked and obtained Rs. 25,000 from the defendants and was also paid by the State, but he failed to appear for the trial dates. The Court of Appeal always postponed the case – again and again for many years. In the recent past, due to judges, people have had to spend their money and ruin their lives. They have cast a shadow on the lives of the defendant's children for eternity."

WPC/DP.A/S/47
Condemned on charges of murder

"When I was getting out of the prison bus [at the High Court], XX lawyer came to me and said to plead guilty and accept guilt. I asked him for one week to tell my family. He said no. Then I asked for two days. He said he can't wait. Then he withdrew himself from the case in court. He did not ask XX [co-defendant, and allegedly the drug trafficking business owner] to plead guilty or to accept the case. Because we didn't have a lawyer that day, the case was postponed.

For the next court date, we hired a lawyer named XX. Both I and my boss XX [co-defendant] hired the same lawyer. He appeared for the case and said if the judge gives you a sentence for this case, the judge must be a madman. He was

⁶⁸⁴ For reference purposes the letters of the condemned were coded as follows:

WCP/DP/S/... = Welikada prison, death row, written the letter in Sinhala

WCP/DP/T/... = Welikada prison, death row, written the letter in Tamil

WCP/DP.A/S/... = Welikada prison, death row on appeal, written the letter in Sinhala.

WCP/DP.A/T/... = Welikada prison, death row on appeal, written the letter in Tamil

WCP/DP/E/... = Welikada prison, death row, written the letter in English

WCP/DP.A/E/... = Welikada prison, death row, written the letter in English

very sure about himself. Then on 2003.12.XX I was given the death penalty and my boss, XX was acquitted from the case by Negombo High Court judge XX.

Then my sister filed an appeal for me in the Court of Appeal. First, I had a state appointed Tamil lawyer. I can't remember his name. He told me to get a lawyer named XX. We got XX and paid him Rs. 26,000. I was taken four times to the Court of Appeal, but he only sent a junior. I was angry and said because the lawyer isn't coming the case is postponed all the time. Then the lawyer XX sent a letter saying he is withdrawing from the case and that he will give all court records etc. to the previous lawyer. He did not return the money. This happened in 2007. Then we had to get lawyer XX from Rajagiriya. On 2009.08.06, the Court of Appeal affirmed my sentence.

...I later learnt that unknown to me, lawyer XX had told my family he was going to appeal to the Supreme Court. He had said he went to the court thrice. Then he called me and said "there I've saved your neck from the noose, now you are life." But the prison didn't get any document saying I'm now life. Then in 2014, the commutation committee told me the Supreme Court had rejected my appeal on day one. Lawyer XX had lied to me.

Later, the judge that gave me the death sentence and acquitted my boss. Judge XX was interdicted for having taken a bribe from YY to grant bail for a drug case. Everyone told me that my boss XX had also bribed judge XX and that's why he was acquitted."

WCP/DP/S/301
Condemned on charges of drug trafficking

"...Then judge Sarath Ambeperiya sir was killed. After that, all the judge sirs and madams got really angry...when I got into the witness stand, more than the prosecutor it was the judge that cross examined me. I understood that it was because Sarath Ambeperiya was killed, that was the kind of environment at the time. I understood that an injustice is going to happen to me... My lawyer didn't even come on the days of the closing arguments. He didn't even come on the day I was given the death penalty."

WCP/DP/S/24
Condemned on charges of drug trafficking

"This is a sad incident that happened in Balangoda in 2002 when I was drunk. Because I could not bear it, I wanted to plead guilty in the High Court, but I could not do so because of the advice of the lawyer. Even though I could have been given a lesser sentence [a term of imprisonment for culpable homicide] because I was drunk, and because I was aggrieved at the moment, due to the weaknesses of the lawyer I was given the death penalty. I was under severe financial strain and could not pay for a lawyer at the Court of Appeal. I was given a state appointed lawyer. I do not know who that is – and [he] had no

idea about this case. As a result, the Court of Appeal in about fifteen minutes without even trying my case affirmed the conviction. If I had the opportunity to get a lawyer to explain the issues of the case, I am certain that I would have been given normal imprisonment [instead of the death penalty].”

WCP/DP/S/55
Condemned on charges of murder

The Commission, through interviews and the letters of the condemned, found a striking pattern of lack of legal awareness. For example, many condemned prisoners were unaware of the importance of a dock statement i.e. an allocutus, as stated in section 280 of CCP, where before a sentence of death is pronounced the accused is asked whether s/he has anything to say regarding why a judgement of death should not be pronounced against him/her. According to jurisprudence, due consideration should be given to dock statements. In *Gunasiri and two others v Republic of Sri Lanka*⁶⁸⁵ the Court of Appeal held that a trial judge must consider three principles when evaluating a dock statement: if the dock statement is believed it must be acted upon; if the dock statement creates a reasonable doubt in the prosecution's case, the defence must succeed; the dock statement of one accused should not be used against the other. In *P.P. Jinadasa v Attorney General*⁶⁸⁶ the Court of Appeal overturned the death sentence given by the High Court and ordered a retrial, as the trial judge had dismissed the dock statement. The Court of Appeal held that even though a dock statement is not given under oath and is not subjected to cross examination, it should still hold an evidentiary value as per the three principles held in *Gunasiri and two others v Republic of Sri Lanka*. Following are two examples that illustrate the extent of the lack of legal awareness, which is exacerbated by the lack of competent legal counsel to advise persons on their rights:

“Everything happened in Sinhala. The confession was written in Sinhala and I was forced to sign. The proceedings in court happened in Sinhala. I had requested an Urdu translator and the court didn't get one for more than two years. Then the judge asked me if it was ok if the mudliyar translates for me to English. By then I had been in remand for such a long time and I said ok.... Then on the date the death sentence was pronounced the judge asked me, do you have anything to say in your defence as to why I should not give you the death penalty? I said: 'I just want to go home.' Now you tell me it's called a dock statement and it is very important, but no one told me that before. I didn't know what it means.”

Pakistani male condemned prisoner

“The High Court judge asked me before sentencing me to death what I have to say. I, the accused stayed silent, and because of that the [the judge said] the court is of the opinion that the accused has acknowledged his guilt by remaining silent, as such the court sentences the accused to death. Yet, the judge did not inquire from the accused whether he is 1). A deaf person 2.) Ill

⁶⁸⁵ Gunasiri and two others V Republic of Sri Lanka- 2009(1) SLR 39

⁶⁸⁶ CA HC 167/2009 Ratnapura P.P.Jinadasa Vs. The Attorney General

person 3.) One who does not know how to speak in an open court. The judge has the duty to be fair in the interest of justice, but instead he tries to appease the petitioner's lawyer and to assist in promotions, and to become famous. I have a fear of speaking in public, that is why I stayed silent. I didn't know it was important to tell the judge I was innocent before the death sentence is given."

Male condemned prisoner

A person is eligible to have a lawyer appointed by the state at the High Court and the Court of Appeal, if one is unable to afford counsel. However, at the Supreme Court there is no such mechanism to provide legal aid. The narratives of the condemned illustrate that very few people on death row have the financial means to retain a lawyer to appeal to the Supreme Court. While the prison authorities are tasked with forwarding the appeals of condemned prisoners within fourteen days to the Court of Appeal if their families are unable to do so, they do not forward appeals to the Supreme Court. As one of the jailors at WCP in charge of writing appeals on behalf of condemned prisoners said to the Commission, "Supreme Court is not free." This highlights concern with regard to Sri Lanka adhering to international standards that require persons sentenced to death to have access to the highest possible means of appeal. A person aggrieved by the sentence of death pronounced against him/her could submit a complaint to the UN Human Rights Committee, but it requires that all domestic remedies are exhausted. Hence, this form of redress is unavailable to someone who has not appealed to the Supreme Court of Sri Lanka. The Commission's findings illustrate that the right to adequate legal assistance at all stages of legal proceedings and the right to have the highest possible means of appeal is out of reach for many defendants in Sri Lanka's criminal justice system. Following are excerpts from the letters of the condemned that illustrate the gaps in the criminal justice system in Sri Lanka in ensuring that every person obtains a fair trial before they are sentenced to death:

"I had a little piece of land given to me by my parents, I sold even that to pay for the lawyers. I hope the lawyers are happy now ...I was a farmer and my wife ran a small grocery store. That was when I was imprisoned for this case. I appealed through the state and the Appeal Court affirmed the conviction. I do not have money to go to the Supreme Court. That is not a place for poor people like us. People with money can go there and get acquitted, another group gets lesser sentences and having spent that go out. What help do we the poor get?"

WCP/DP/S/95

"I am sorry that what I have written here will be difficult for you to read. I was illiterate. After I was ordered to be hanged and killed, I came here. In the past fifteen years I learnt some letters. So, when you asked me to write a letter, I was very happy. I thought I will join the letters and formulate sentences myself [without asking for help from another person]. That lawyer that represented me was a court appointed lawyer. He asked me for 10,000 rupees. I was very poor and didn't have money to give him but somehow, I managed to give him

the money. Then he asked for 10,000 again. I couldn't pay him. So, he didn't do a good job. Other condemned people told me that I must have angered the lawyer by not giving him the money."

WCP/DP/S/23

"My lawyer seems to have had a personal grudge against the judge at the appeal court. He always did and said things that angered the judge. Once the judge even warned him that he is in contempt of court. The lawyer said to me, 'don't worry I will get you out of the noose.' Then he also said, '[I] can't be sure about the *demala* [referring to a Tamil judge in a racist manner].' I asked the lawyer to not act out in court, but he didn't listen to me. At the end the court confirmed the sentence. The judge was very angry. If you think I'm lying, you can call the co-defendant's lawyer XX at this number...At the end, the lawyer went home and lives happily with his wife and children. I came back to these four walls, I sit in the middle of this dark, damp, dirty walls – the void cannot even be filled with my sighs and wailings."

WCP/DP.A/S/35

"When I appealed to the Court of Appeal, I was given a retrial, but the prosecutor appealed against the retrial to the Supreme Court. Then the Supreme Court asked the Court of Appeal to re-hear the appeal. It was male judge XX who was the president of the court and female judge XX. They told the State Counsel to hurry up and finish the appeal within the year. [prisoner was sentenced to death in 2007]. My case was called twice that year, but the prosecutor didn't come to court on the day. He said he had a high-profile case involving XX company in the Supreme Court and that he didn't have the time to come for my case."

WCP/DP/S/23

Qualitative information in the study thus illustrates that Sri Lanka has not fulfilled its obligation to ensure that all citizens are able to enjoy the right to a fair trial guaranteed in the Constitution and the ICCPR with regard to the right to adequate legal assistance at all stages of the legal proceedings and the right to have the highest possible means of appeal. These findings also highlight that the majority of prisoners on death row have not enjoyed the equal protection of the law, the right guaranteed to all persons under Article 12 (1) of the Constitution of Sri Lanka.

The use of scientific evidence

In the past decade, DNA evidence has been used to review old cases, often leading to the exoneration of long-term prisoners and those on death row, proving the weaknesses in the criminal justice system.⁶⁸⁷ Since 1973, in the USA, 164 death row inmates have been

⁶⁸⁷ Innocence Project, 'DNA Exonerations in the United States' (2017) <www.innocenceproject.org/dna-exonerations-in-the-united-states/> accessed 19 November 2018

exonerated, of which in twenty-one cases DNA evidence has played a crucial role.⁶⁸⁸ Of the exonerations since 1973 in the USA, about 33% were due to false or misleading forensic evidence presented in trial.⁶⁸⁹

Prisoners have stated that even when they have requested scientific analysis of evidence, their requests have been inadequately met as illustrated by the statement of a condemned prisoner who said thus:

“I had a court appointed lawyer, but she was a good lawyer. She requested the Court of Appeal to have a DNA examination to confirm the deceased’s identity, but the Court of Appeal informed that the bone remains had been destroyed [given the number of years]. Isn’t it the responsibility of the Court to make sure such important production is kept safe for the duration of the trial?”

WCP/DP/S/99

Calling for the abolishing of the death penalty, emeritus Professor of Forensic Medicine and Toxicology at University of Colombo, Professor Ravindra Fernando, highlights the failure to use new technological and scientific advancements in trials, especially those for serious crimes, which adversely impacts the right of the accused to a fair trial. Professor Fernando states that:⁶⁹⁰

‘It is well-known that our criminal justice system is heavily weighed against the poor and the disadvantaged who do not have the capacity, knowledge and resources to search for evidence that would show their innocence, and who have less access to competent and experienced lawyers. Therefore, they are the most likely victims of miscarriages of justice.

All-Ceylon cricketer Mahadeva Sathasivam would have been hanged, if he could not afford to retain Dr. Colvin R. de Silva and get down Professor Sydney Smith, Professor of Forensic Medicine, University of Edinburgh, to support the crucial medical evidence of Professor G. S. W. de Saram, the first Professor of Forensic Medicine of the University of Colombo.’

Undue delay in the trial and the appeal process

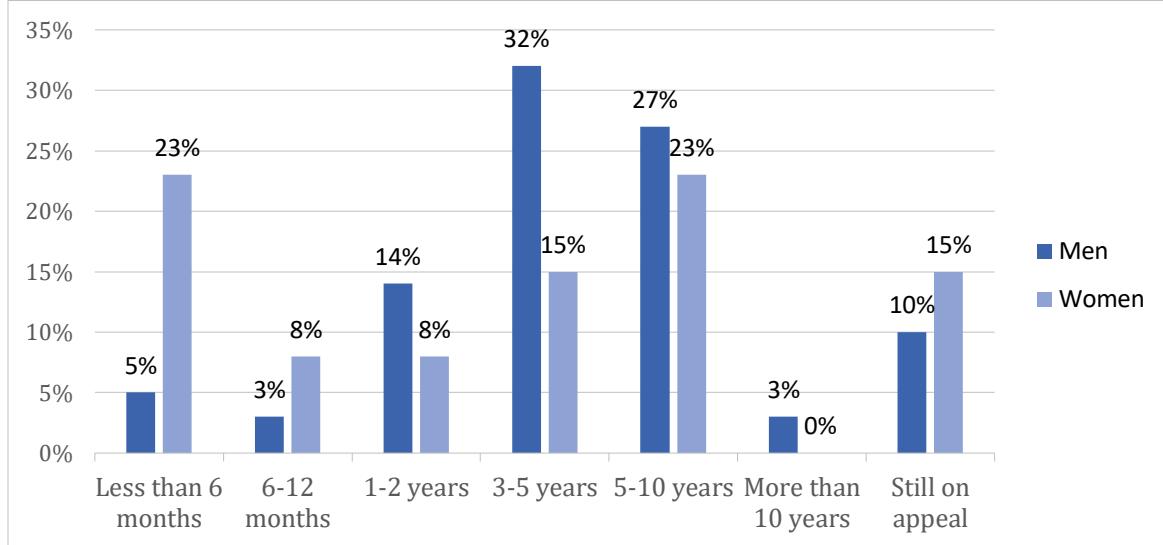
The trials of the majority of those on death row have taken more than a decade to conclude and, in some instances, more than twenty years. The length of time it usually takes for indictments to be filed in capital punishment cases, which are followed by a prolonged trial and appeal process is illustrated in graph 19.4.

⁶⁸⁸ Death Penalty Information Center, ‘Innocence: List of Those Released from Death Row’ <<https://deathpenaltyinfo.org/innocence-list-those-freed-death-row>> accessed 26 November 2018

⁶⁸⁹ See Table 19.6

⁶⁹⁰ Prof. Ravindra Fernando, “Death Penalty is not the answer,” 28 August 2018, Daily Mirror, <http://www.dailymirror.lk/article/Death-penalty-is-not-the-answer-154252.html>

Graph 19.4 – Male and female condemned prisoner respondents on the length of the appeal process⁶⁹¹



As illustrated in graph 19.4, 3% of the male respondents had been on appeal for more than ten years. 27% of the male respondents and 23% of the female respondents had been on appeal for five-ten years. Compared to their male counterparts, condemned women have been on appeal for a lesser number of years, which is explained by the fact that the large majority of the condemned female prisoner population in the country was sentenced to death in the last five years.⁶⁹²

The narratives of prisoners below confirmed the quantitative data presented in graph 19.4:

“I surrendered to the police on 1998.XX.XX. I was remanded on 1998.XX.XX but the trial only started in 2001. I was given the death sentence on 2007.XX.XX. It took nine years for the case to finish from the Magistrate’s Court and the High Court. Then I was on appeal at the Court of Appeal for five years. My sentence was affirmed in 2012. Now I am on appeal at the Supreme Court. It’s been six years and it’s still going on.”

WCP/DP.A/S/66

“This incident happened in 1985. It was no dated for a long time [suspended indefinitely] but the High Court trial only started in 1998. Then I was given the death penalty on 2000.12.07. I went to the Court of Appeal after many years and they affirmed my sentence. I have been in this prison for eighteen years since I was told I’m going to be hanged from the neck.”

⁶⁹¹ Still on appeal refers to the percentage of respondents who chose ‘still on appeal’ instead of choosing a time period and did not give a time period for how long they had been on appeal.

⁶⁹² For example, DOP statistics illustrates that three in 2008, four in 2009, three in 2010, eight in 2011, nine in 2012, four in 2013, two in 2014, seven in 2015, four in 2016, thirteen in 2017 women had been sentenced to death.

"This incident took place on 1993.04.08. There were six co-defendants. I was arrested in on 1993.04.11 and remanded on 1993.04.12. One year and two months on remand. I was granted bail. Then on 2017.07.11 Colombo High Court 4 gave me the death sentence. It took twenty-four years for this trial. There were four judges during the trial time. Now I am on appeal and I know it'll take even longer."

WCP/DP.A/S/88

The Commission found a number of condemned prisoners who have been on appeal for more than a decade. The trial of a prisoner sentenced to death for murder took twelve years to conclude and he is currently on appeal for ten years at the Court of Appeal. Another prisoner interviewed at PCP was seventy-one years old and has been on appeal for the past fourteen years. A condemned prisoner on appeal who has been in prison since he was first remanded and never given bail writes:

"Please take note, the Court of Appeal trial is unfairly being delayed because the State Counsel fails to appear in Court. The dates are:

XX.09.2016 – state counsel didn't come
XX.02.2017 – state counsel didn't come
XX.03.2017 – state counsel didn't come
XX.05.2017 – state counsel didn't come
XX.07.2017 – state counsel didn't come
XX.12.2017 – state counsel didn't come
XX.05.2018 – state counsel didn't come
XX.10.2018 – is the next court date"

WCP/DP.A/E/01

"I was arrested in 1990. The High Court gave me the death sentence on 21 January 2008. Since then I have been on appeal at the Court of Appeal. It's been eleven years and I'm still on appeal. They called the case about eight times. I am very much aggrieved by this delay. Why does it take so long? I am already old."

WCP/DP.A/87

"This went on for twelve years in the Magistrate Court. It was even no dated [suspended indefinitely]. Then it went on for ten years at the High Court. It is my opinion if Attorney General Department counsels do not evade dates given by the court and appear in court on time, the overcrowding in prison and the immense suffering of the prisoners will be reduced by 99%."

WCP/DP.A/S/66

The undue delay in the appeal process also adversely impacts the ability of prisoners on death row to be eligible to be considered for commutation of their sentences, since

commutation committees appointed by the President or the MOJ only evaluate condemned prisoners who are no longer on appeal. As commutation committees are established in an ad hoc manner and are not at present constituted regularly, prisoners who are not considered by these ad hoc committees are at a disadvantage because it is not known whether, and if so when another committee might be established.⁶⁹³

It should be noted that undue delay in the trial and in the appeal process may amount to arbitrary detention. For example, in *Sujith Lal v Attorney General*⁶⁹⁴ the Supreme Court upheld the decision by the Court of Appeal⁶⁹⁵ in setting aside the conviction and sentence, and consequently acquitted a man sentenced to death by the High Court, as the State Counsel requested a fresh trial to be ordered due to an error in law by the High Court. The Court of Appeal in acquitting the condemned prisoner in the interest of justice stated that:

'A long delay to finally conclude the matter is a relevant factor to be taken into consideration. The conviction and sentence may be so deserving but court cannot forget the fact that when a fresh trial is ordered by the Appellate Court the accused is tried for the second time, and the process has to be undertaken all over again. The second trial if at all would be after a long lapse of time of over seventeen, and after the accused by law was incarcerated and spent eight years in prison custody. One cannot forget the fact that all this happened due to no fault of the accused party but for a procedural irregularity in the administration of justice itself. Good part of the blame goes to the system and not the accused who is called upon to be tried once more. A fair trial is a worldwide recognized concept to an accused and could never be denied, in our country.'

The Supreme Court in upholding the decision of the Court of Appeal quotes *Seenithamby V. Jansz* where the appeal court judge writes:

'I have been asked to send back the case as against the first to the sixth accused on count two for a new trial. I do not think I shall be justified in so doing. To accede to such a request will merely encourage slackness, negligence and inexactitude on the part of prosecutors.'

The Supreme Court further states that ordering a fresh trial, due to procedural error for an offence that goes back twenty years should not be considered as 'delay but as 'long delay''. The Supreme Court reiterates that while the prosecution has a strong *prima facie* case against the accused, 'this court cannot simply ignore the fact that he had gone through a full trial, convicted and was in remand custody pending the appeal nearly eight years for no fault of him but merely for a procedural irregularity in the administration of justice itself.' This judgement by the Supreme Court also points to the issues of the credibility of witness

⁶⁹³ For a detailed discussion, please refer chapter Early Release Measures.

⁶⁹⁴ SC Appeal 14/2006

⁶⁹⁵ COA 38/06

testimonies and memories of incident that are subjected to prejudice impact trials that take decades to conclude.

This has also been pointed out by the UN Working Group on Arbitrary Detention in its closing statement following its visit to Sri Lanka from 4-15 December 2017.

The risk of wrongful convictions

One of the arguments for the abolition of the death penalty is the possibility of wrongful convictions, as a wrongful conviction not only can result in an irreversible punishment being given to an innocent person but also diminish public trust in, and the integrity of the criminal justice system. As a result, the real perpetrators will not be held accountable, public safety is put at risk and justice is not served. Consequently, wrongful convictions harm the public good. Dr. Colvin R De Silva, during the Parliamentary debate on the Suspension of Capital Punishment stated, 'of all things that the State may take away from a man there is one thing if you take away you cannot only not return but you can never compensate him for, and that is his life.'⁶⁹⁶

Justice P.N. Bhagawati in his landmark dissenting opinion in the Indian Supreme Court case of *Bachan Singh v State of Punjab*⁶⁹⁷ underscored that, 'howsoever careful may be the procedural safeguards erected by the law before death penalty can be imposed, it is impossible to eliminate the chance of judicial error. No possible judicial safeguards can prevent conviction of the innocent.'

The severity of wrongful convictions is highlighted in an article published by President's Counsel Saliya Pieris who narrates his own experience as a lawyer stating that, 'a retired judge of the Court of Appeal [Sri Lanka], one time a trial judge told me how he decided to convict a man on a drug charge carrying the death sentence, but the night before the judgment, he pondered over the same and changed his mind. After acquitting the accused the prosecuting counsel had come to him and told him that it was a good thing that he acquitted the accused because the police had confessed to him during the trial that their story was not true.'⁶⁹⁸

As illustrated by graphs 19.5, 19.6 and Table 19.9, in the US, where review is possible after exhausting normal appeals, exonerations have taken place for many reasons. In Sri Lanka exonerations are unheard of, owing to the fact that the majority of condemned prisoners do not have access to and are unaware of, or unable to access assistance to initiate a review that could result in such exonerations. For example, in Sri Lanka there are no civil society and

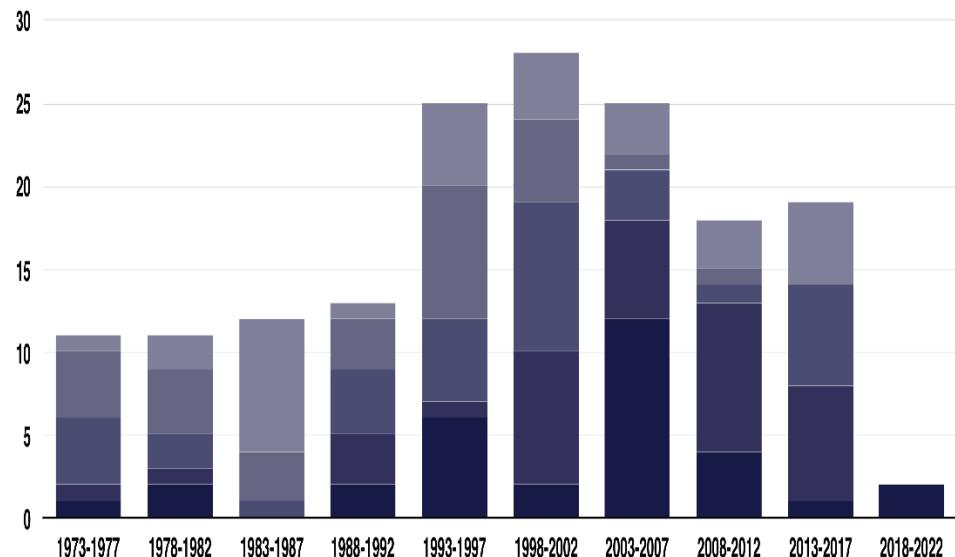
⁶⁹⁶ Hansard 17 May 1956, pg 550

⁶⁹⁷ AIR 1980 SC 898, 1980 CriLJ 636, 1982 (1) SCALE 713, (1980) 2 SCC 684, 1983 1 SCR 145

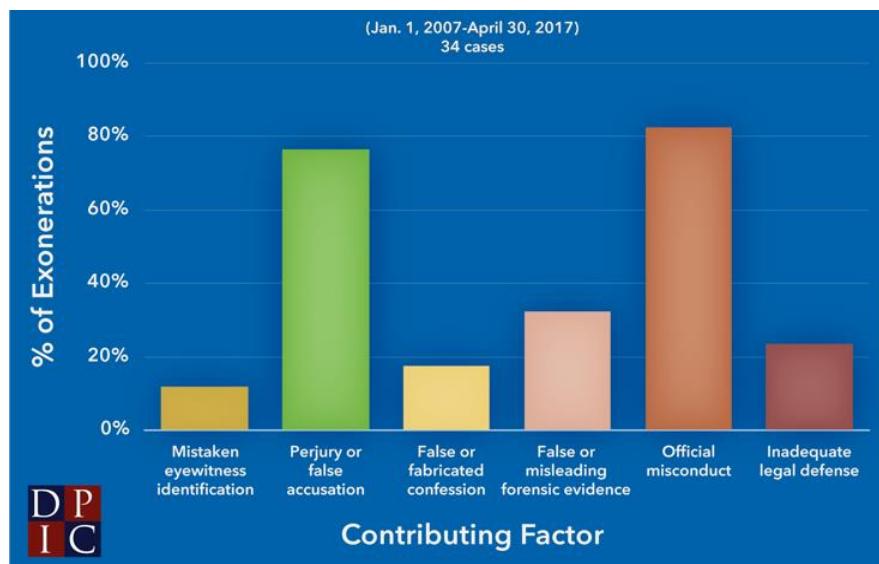
⁶⁹⁸ Saliya Pieris, 'To Hang or Not to Hang' *Sunday Observer* (Colombo, 15 July 2018) <www.sundayobserver.lk/2018/07/15/opinion/hang-or-not-hang> accessed 25 November 2018

legal initiatives such as the Innocence Project⁶⁹⁹ that examine the cases of death row inmates to identify possible instances of miscarriage of justice.

Graph 19.5 - Death row exonerations in the US⁷⁰⁰



Graph 19.6 - Death row exonerations in the US based on the reasons for the wrongful convictions⁷⁰¹



⁶⁹⁹ Innocence Project, 'Exonerate the Innocent' (2017) <www.innocenceproject.org/exonerate/> accessed 20 November 2018

⁷⁰⁰ DPIC, 'Exonerations by 5 Year Span' (5 November 2018) <<https://deathpenaltyinfo.org/innocence-and-death-penalty#inn-yr-rc>> accessed 29 November 2018

⁷⁰¹ DPIC, '% Death Row Exonerations by Contributing Factor' <<https://deathpenaltyinfo.org/causes-wrongful-convictions>> accessed 29 November 2018

Table 19.11 - Reasons for exonerations in the US from 2007 to April 2017⁷⁰²

Cause for wrongful conviction	Number of cases	Percentage (of exonerations)
Official misconduct	28 cases	82.4%
Perjury or false accusation	26 cases	76.5%
False or misleading forensic evidence	11 cases	32.4%
Inadequate legal defence	8 cases	23.5%
False or fabricated confession	6 cases	17.6%
Mistaken eyewitness identification	4 cases	11.8%

The letters of the condemned detail stories of police brutality, forced confessions, false eyewitness testimonies and evidence fabricated by investigating authorities. A prisoner condemned for charges of drug trafficking stated to the Commission that he was asleep in his house when the police raided his house and arrested him, instead of raiding the house of his neighbour where drug dealings were taking place, to which he had no connection. He stated that the drugs produced in court as evidence were planted by the police. Another prisoner condemned for drugs charges stated:

"On 2004.XX.XX in Sinna Dupatha, the Dematagoa police unit raided and arrested me. A person from the underworld named XX1 gives the drugs to XX2. He also lives in the Sinna Dupatha. XX2 has an underling named XX3. When the police caught me, they asked where XX3 is. Police were in civil at the time and there were about seven officers. One of the officers' name is XX. He was a close associate of XX1. Officer XX hit me a couple of times with his hands and legs and asked me to tell where XX3 is. I said I don't know, and pointed out his home.

Meanwhile, an officer was searching the place nearby and brought a couple of drugs packets. After I said I don't know where XX3 is, I was brought to Dematagoda police station. They thought I am also from Sinna Dupatha. In the police station while weighing those drugs packets, officer XX said, 'if you don't tell where XX3 is, I will plant all of these goods on you.' Because I could not give information about XX3, I was produced in court on 2004.XX.XX."

WCP/DP/S/43

The room for wrongful convictions in Sri Lanka is illustrated by the statements regarding the Seya case made by DIG Ajith Rohana, at the aforementioned public event organized by the Bar Association of Sri Lanka on 14 June 2019. The Police claimed that *Kondaya*⁷⁰³ had given a detailed confession of the abduction, rape and murder and he was produced in court and remanded. Prior to this, two others were also arrested, among them a seventeen-year-old, who were released subsequently. These two then complained that they were stripped naked and severely assaulted by Kotakadeniya police officers. The seventeen-year-old claimed that

⁷⁰² ibid

⁷⁰³ Kondaya is a nick name given to the person because he has long hair.

he was photographed naked, thereby subjecting him to degrading treatment and sexual harassment, and that the police did not treat him as they are required by law to treat minors. This later led the then IGP Illangakoon to initiate an inquiry.⁷⁰⁴ *Kondaya*'s DNA was not a match to the DNA samples taken from the deceased and instead his brother was arrested, who was in fact the perpetrator of the crime. *Kondaya* was released but, like the two other suspects arrested, had his life irrevocably changed and subjected to upheaval. Upon release *Kondaya* alleged that his confession was obtained by the investigating offices of the CID forcibly after subjecting him to brutal torture, and revealed injuries he had sustained due to such torture. Dunesh Priyashantha alias *Kondaya* then went on to lodge complaints at the Human Rights Commission, the National Police Commission and the Supreme Court. Yet, DIG Ajith Rohana, at the Bar Association event, claimed that in such instances the police have no other choice but to succumb to the demands of the public, even at the cost of leading to a wrongful conviction. This incident highlights the role played by the public, the media, law enforcement officers and the entire criminal justice system in grave miscarriages of justice. If the real culprit had not been apprehended, today *Kondaya* would be on the death row at WCP, and if the executions had been reinstated bowing to popular demand at the time, an innocent man would have been hanged at the Welikada gallows.

6.3. The dynamic between socio-economic factors and criminal activity

A weakness of the retributive theory of punishment, which states than an offender deserves to be punished for their criminal conduct, is that socio-economic factors that enabled criminal activity to take place are not taken into account. Such factors are recognised under national legal frameworks, which allow certain mitigating factors to operate as a defence in certain crimes whereby judges have the discretion to decide appropriate reduced punishment after considering all relevant surrounding factors. This illustrates that several elements not within the person's control, such as systemic factors, or threat to the person's bodily integrity could lead a person to commit an offence. These elements, which are discussed in the sections below, further strengthen the case to abolish cruel and irreversible punishments. Therefore, it is important to address these underlying weaknesses in the social structure in any effort that seeks to address crime and punishment. As Dr. Colvin R De Silva stated during the parliamentary debate on the Suspension of the Capital Punishment in 1956,⁷⁰⁵

‘The whole meaning of penology is that we look at a man not only as responsible for himself but also as a person for whom, we, in society, are responsible, and that in all questions of punishment there must be brought to bear the bringing home to a man of his own responsibility for his actions and the operation in each situation of the responsibility of society for the actions of its members.’

⁷⁰⁴ <http://www.sundaytimes.lk/151004/news/seya-case-police-handling-of-teenage-suspect-draws-fire-166760.html>

⁷⁰⁵ Hansard 17 May 1956

Gender based violence

In 2017 the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions pointed out that imposing the death sentence amounts to arbitrary killing in circumstances where the Courts fail to take into account essential facts, such as a long history of being a victim of domestic violence.⁷⁰⁶

Rule 61 of the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (hereinafter referred to as the Bangkok Rules) states the courts should have the discretion to decide mitigating factors such as the lack of criminal history, relative non-severity of the offence, the nature of the criminal conduct in light of the women's background, such as of those who have experienced long history of violence. The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, in her 2017 report to the UN Human Rights Council, said that extenuating circumstances, such as a long history of domestic violence where a victim can be diagnosed with the battered women's syndrome, are not factors considered in most, if not all, murder trials. In Sri Lanka, where domestic violence is not criminalized, victims of such violence have very little relief from the justice system. Therefore, women who are subjected to brutal and systematic domestic violence and do not have any support from the criminal justice system nor any other means of social support and security, may be pushed to the point of using violence against their abuser to safeguard themselves which can result in death. The Commission came across the case of a female prisoner on death row, currently housed at ACP, which is illustrative of this.⁷⁰⁷

The female prisoner at ACP stated to the Commission that she is thirty-seven years old and was sentenced to death by the High Court on 26 May 2009. The Court of Appeal affirmed her sentence on 17 July 2017. She was arrested by the police for the murder of her husband. She got married at the age of sixteen and her husband was a day labourer and a heavy drinker. Soon after the birth of her first child her husband started beating her every night. She was a victim of domestic violence for eight years until the day she could not bear it anymore. She said:

“He started beating me very badly. My first son was with my mother at that time, but the second son was at home. My mother came to save me, and my husband tried to hit her with the *alawanguwa*⁷⁰⁸. So, she ran away and took my second son with her. To save myself, I grabbed a club nearby from the kitchen and hit him over the head once. He was drunk, so he fell down. Then I looked at him and got scared, what if he wakes up and beats me to death? So, I hit him continuously. All the years of beating, for eight years. He always hit my head. Always. I couldn't take it anymore. I have had enough.”

⁷⁰⁶ “Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings.” A/HRC/35/23

⁷⁰⁷ In the prison population, there are four condemned women, while there are above sixty condemned on appeal women, as of 5 September 2018

⁷⁰⁸ Crow bar

When inquired whether in the eight years of abuse she ever went to complained to the police she stated:

"Yes. Once I went to the police. Just once. After I was beaten up very badly, I went to the XX police. They wrote down the complaint. I had bruises all over my body and especially in my hands. No, they didn't take me to a doctor or a JMO. They said they will come. So, I went back. Instead of going home I went to my aunt's house. I stayed there for five days, waiting for the police to come. They didn't come. Then after five days, my husband came and asked me to come back home. So, I went, I had no other choice. After that the police officers came to our home and questioned my husband and they mediated. He was so angry. After the police left, he beat me. He beat me senseless. All night long. Yes, after that I never went to the police."

Women facing the death penalty arising out of domestic abuse suffer from multiple levels of gender-based oppression. The story of the condemned woman illustrates the larger social patterns of gender inequality, as well as economic insecurity which exacerbate their inability to mount a vigorous defence. Hence, they are not able to enjoy their right to a fair trial. As the condemned female prisoner in ACP mentioned above said:

"I was arrested in 2006. I was in remand for three years. No. I couldn't pay for a lawyer. In 2008, the Magistrate Court gave me a bail on three blood relatives' surety and Rs. 5000, but no blood relative came forward to sign. Since I was in remand, the judge called the trial quickly. I didn't have a lawyer, so the judge appointed one. The prison filed an appeal for me in the Court of Appeal. The prison doesn't do it for the Supreme Court. They said we need to have money to go there. I have no money. So, I can't go there."

A letter from a male condemned prisoner given the death penalty for a murder he committed when he was eighteen years old, underlines the impact of gender-based violence on children and young person, who may either be direct victims or would be witnesses to such violence for years, which may result in such persons internalizing violence as well as become secondary victims of it. He writes:

"I would like to tell you my story maybe you will understand better than the Court. Our father had left us and gone when we were young. My mother couldn't take care of my sisters, so she gave them away to other people. Villagers said that my maternal uncle had raped one of my sisters. This maternal uncle always got drunk and came to our home and beat my mother, saying she is a curse. He would beat me up too. The villagers called me the widow's offspring ("kanawaddum patiya"⁷⁰⁹).

⁷⁰⁹ Kanawaddum patiya is an offensive Sinhala term for the child of a widow to indicate the child's bad luck has brought bad fortune upon the family.

Then when I was sixteen, my mother and I ran away. I started working for a mason bass and started earning. I bought a tiny piece of land and built a thatched shed for my mother and I, but the uncle found out where we lived and came there too. He would beat us and demand money, he took away all of the money we would save. Many a times I had gone to police and the police would come and mediate. Then the uncle comes and beat us up again. This happened like a never-ending cycle. Then another day the uncle came, beat us up, threw away our food, smashed the pots and got out from the house – he started throwing stones at our roof. I don't know what happened to me. My entire body started shivering and I dragged the sword like weapon hidden in the roof and run out and stabbed him. I stabbed him to death. I took this weapon and went to the police and surrendered.

I was eighteen years old. It was 1998. The case was no dated [suspended indefinitely]. After eight years they called the trial. I told the court appointed lawyer I want to plead guilty and ask the judge for compassion. The lawyer told me: 'are you crazy, I'm going to win this case.' So, you lie and tell the court you are not guilty. I didn't know any better. I thought the smart lawyer knows the law and I lied like that. So, I'm going to be hanged now. They said so on 2009.11.12 in the High Court."

WCP/DP/S/25

Thus, the cruel and irreversible sanction of death should not exist in a society in which there is inadequate awareness of gender-based violence, the law has not evolved to recognise and criminalise the mental and physical abuse that persons may suffer at the hands of their partners or family members, and victims have little or no support to leave a violent domestic situation. A system that fails to recognise that some offenders may also be victims, who did not receive protection under the law, does not operate to the benefit of all members of society, especially the vulnerable groups within society, because it does not acknowledge that the failures and weaknesses of both society and state contributed to certain offences being committed.

Children and young offenders

The Commission during the study met with several prisoners on death row who were given the death penalty for offences they committed when they were under the age of eighteen. In Sri Lanka, the death penalty is not pronounced only if the person is under the age of eighteen at the time of sentencing and not at the time the offence was committed. Given that trials are protracted those who are under eighteen at the time the offence was committed would most likely be over eighteen at the time of sentencing. In one example, a prisoner who became paraplegic due to an accident prior to imprisonment had received the death penalty for an offence that occurred in 1994, when the said prisoner was just fourteen years old. It must also be noted that the age of criminal responsibility in Sri Lanka was only eight years before the Penal Code was amended in 2018, raising it to twelve years.

*In P. D. Nilanka and K. P. Samantha v AG*⁷¹⁰ the Supreme Court of Sri Lanka while evaluating section 53 of the Penal Code highlights how the law itself can cause injustice by quoting an English Judge, ‘The object of every court must be to do justice within the law. Admittedly the law sometimes forces an unjust decision. If there is no way about it, it is for Parliament to alter the law if the injustice merits an alteration.’ However, the Supreme Court stresses the importance of the legislature in bringing about prudent amendments to existing archaic or unjust laws. The Supreme Court quotes the case of *AG and others v Sumathipala*, ‘... that injustice cannot be cured by this Court as it is for the legislature, vis., the Parliament to make necessary amendments if there is a conflict between the specific provisions and individual liberty.’ The Supreme Court decision in *P. D. Nilanka and K. P. Samantha v AG* further states that while ‘it may be desirable to visit the offences committed by persons below the age of eighteen, with a lesser culpability, the applicable statutory provisions in force, however, leave no room for that’, thereby reiterating the need for legal reform.

As recognized by the Supreme Court, mitigating circumstances warrant a sentence that takes into account the context of a crime and the offender in the interest of justice. However, the current legislation in Sri Lanka does not give the judge discretion in relation to the offence of murder. In India, as discussed above, a series of Supreme Court judgements resulted in amending the Penal Code regarding mandatory capital punishment for murder, so that mitigating circumstances such as socio, economic and psychological factors that lead to crime are taken into account during sentencing. For example, Justice Krishna Iyer, who was a staunch supporter of abolishing the death penalty, while delivering the Indian Supreme Court judgement in *Rajendra Prasad v State of Uttar Pradesh*⁷¹¹ stated that:

‘the personal story of an actor in a shocking murder, if considered, may bring tears and soften the sentence. He might have been a tortured child, an illtreated orphan, a jobless starveling, a badgered brother, a wounded son, a tragic person hardened by societal cruelty or vengeful justice...He might have been [an] angelic boy but thrown into mafia company or inducted into dopes and drugs by parental neglect...Is the court in error in reckoning the prior provocative barbarity as a sentencing factor?’

6.4. The inhumane and arbitrary nature of the death penalty

Mr. Dharmadasa⁷¹² described an execution that took place on 05 August 1975 when he was the SP of Bogambara, which illustrates the inhumane nature of the process through which the punishment of death is implemented. He stated that on the day of the said execution, the prisoner was seen to be unconscious but the MO upon examination had declared that the prisoner was only pretending to be unconscious. Since the death warrant signed by the President had to be implemented, the prisoner was carried to the gallows. Although the executioner found it difficult to carry out the execution since the prisoner was immobile, he

⁷¹⁰ SC Appeal No. 139/2014,

⁷¹¹ 1979 AIR 916, 1979 SCR (3) 78

⁷¹² Interview with H.G. Dharmadasa, former CGP, Department of Prisons Sri Lanka (Colombo, Sri Lanka, 3 October 2018)

was hanged, and after a while upon examination, the MO declared him dead. Following the execution, the prisoner's family protested alleging that the execution was carried out when the prisoner was unconscious leading to the appointment of a presidential commission that discovered the prisoner's spine was not ruptured, as is normal practice, and instead he had died from asphyxia due to slow strangulation, contrary to the declaration of the MO who was present at the execution. The MO testified to the commission that it had taken about twenty minutes for the prisoner to die. The autopsy found the presence of a large quantity of Largactil, a psychiatric medication prescribed for prisoners on death row, in his body. The said incident was the only time the body of an executed person was exhumed, and a public inquiry was held into an execution.

In an article published in 2001, Mr. Dharmadasa wrote how when he witnessed the first execution as a probationary ASP in 1968 he realized that "if killing is bad, it's bad for the government to kill too", as he describes the last moments of those condemned prisoners who he witnessed being hanged from their neck till life ceased.⁷¹³ Mr. Dharmadasa also stated that in one instance after a death warrant was issued for a condemned prisoner from Kurunegala who was held in Bogambara, the chief monks at the Kandy Temple of the Tooth Relic learnt of the impending execution and requested the President to delay the execution as the stipulated date happened to be the same date as the ritualistic *kap situwima*⁷¹⁴ day for the Kandy *Dalada Pereraha*⁷¹⁵. This particular condemned prisoner's execution was then postponed twice and he was eventually hanged. This incident highlights the inhumane nature of capital punishment because the prisoner is physically and mentally prepared to be executed only to be told the execution would be put on hold, perhaps giving the prisoner hope that his life would be spared. He was then forced to go through the same inhumane process a second time before he was executed when the execution was rescheduled the third time. Another condemned prisoner who tried to commit suicide by cutting his stomach the day before the execution was rushed to the hospital and the execution postponed until his injuries healed, following which he was executed on a different day. These first-hand accounts demonstrate the inhumane and arbitrary nature of the death penalty.

As Justice Bhagwati pointed out in his dissenting opinion in *Bachan Singh v State of Punjab*, 'at the bottom of it [capital punishment] lies the desire of the society to avenge itself against the wrongdoer. That is not a permissible penological goal.' Yet, in the words of Justice Bhagwati, 'does it lie on the petitioner to show that death penalty is arbitrary and unreasonable on the various grounds... or does it rest on the State to show that death penalty is not arbitrary or unreasonable and serves a legitimate social purpose.'

7. General observations

The imposition and the implementation of the death penalty is inherently a violation of right to life and the right to be free from torture or cruel, inhumane or degrading treatment or

⁷¹³ H. G. Dharmadasa, "I watched them being hanged," Sunday Times, 7 January 2001, <http://www.sundaytimes.lk/010107/plus5.html>

⁷¹⁴ Kap Situwima is an ancient Sinhala Buddhist tradition that initiates the preparations for the Dalada Perehara [an annual procession]. The objective of the ritual is to ask for the blessings of the four Gods that protect the country to ensure the protection of the persons involved in the Perehara from any obstructions or hazards.

⁷¹⁵ Annual Buddhist procession of the Temple of the Tooth Relic in Kandy, Sri Lanka

punishment. The current legal system in Sri Lanka imposes death penalty in the most expansive manner and there are no safeguards from the imposition of death penalty provided for those who have committed offences when they were children.

Even though the last execution took place in 1976, courts have continued to sentence persons to death, which has resulted in an increase of prisoners on death row, which has resulted in overcrowding because the prisons system does not provide for accommodation facilities for such a large number of prisoners on death row. Consequently, the living conditions of the death row prisoners are appalling and poor.

The quantitative and qualitative data gathered during the study highlights that the majority of condemned prisoners have not had access to meaningful legal representation owing to the fact that they are from underprivileged and marginalized communities with very low levels of education. The narratives of the condemned prisoners have illustrated that the criminal justice system has failed to provide them the full enjoyment of due process rights. Another shortcoming of the criminal justice process in Sri Lanka is the lack of access to state-of-the-art scientific investigation methods to establish guilt. The undue delay in the trial and appeal processes has also resulted in some condemned prisoners being on death row for more than twenty years, which can amount to unjustified arbitrary detention.

Additionally, consequences of the imposition of the death penalty extend beyond the offender who is sentenced to death. This study highlights the need to have in depth research on the impact on families, both of the offender and of the victim. The social stigma that stems from being on death row extends to a prisoners' family, as society forces the families of the offenders to bear the burden of guilt. The Commission came across many condemned prisoners whose children have been barred from job opportunities because their father/mother is a condemned prisoner, preventing them from earning a livelihood.

The need to abolish the death penalty is highlighted by the findings of the study, which revealed that the large majority of condemned prisoners have committed offences that were not premeditated, exhibiting the flaws of the deterrence argument. No number of procedural safeguards can guarantee that wrongful convictions and judicial error can be eliminated from the criminal justice process, which is the reason death penalty can cause irrevocable harm not only to the wrongfully convicted person but also to society. Since appealing to the Supreme Court of the country is limited to only those who can afford competent lawyers, since no legal aid is provided at the Supreme Court, a condemned prisoner may find it difficult to exhaust domestic remedies in order to appeal to the UN Human Rights Committee.

The possibility of exonerations is negligible to the majority of the condemned prisoners as they do not have access to and are unaware of initiatives to review their cases. In Sri Lanka there is no provision to reopen a case for review, unlike in other countries, after the appeal process is exhausted. Further, there are no civil society initiatives such as the Innocence Project that bring to light possible miscarriages of justice and enable the exoneration of those who have been wrongfully convicted and sentenced to death.

Condemned prisoners are housed for twenty-three hours or twenty-three and a half hours a day in dark, damp and overcrowded cells and wards. Many condemned prisoners, especially men, have been living in such dismal conditions for more than twenty years. Prison officers, on various occasion, have expressed to the Commission their deep sorrow at having to witness condemned prisoners being subjected to such dire conditions for decades. Being subjected to such unacceptable living conditions and the uncertainty regarding their lives, has led many condemned prisoners to suffer from the death row phenomenon, which requires in depth study by psychologists and psychiatrists.

The inherent cruel and inhumane conditions of the death penalty and the conditions of death row prisoners cannot be justified by any civilized society, because it is a type of punishment that is based on the notion of retribution and retaliation and not on rehabilitation and restoration.

20. Prisoners held under the Prevention of Terrorism Act

"When they give sentences, they should take into consideration the age of the prisoner. They should think practically - if someone joins the LTTE at such a young age, would he have joined consciously?"

PTA Convicted, NMRP

(The inmate was arrested when he was sixteen years old and has been in prison for twenty-three years since)

1. Introduction

This chapter will examine the treatment and conditions in prisons of persons arrested under the Prevention of Terrorism Act No. 48 of 1979⁷¹⁶ (PTA) and their experiences of the criminal justice process, which have had an impact on their period of incarceration.

Since its enactment, the PTA has been widely critiqued for its disproportionate derogation from Constitutionally guaranteed fundamental rights, international human rights standards and Sri Lanka's international legal obligations. The Commission, which has repeatedly called for the abolition of the PTA⁷¹⁷, has received numerous complaints from persons arrested under PTA as well as their family members alleging various human rights violations.

International law states that even in a state of emergency, the rights against torture, unlawful deprivation of liberty, right to fair trial and due process guarantees are arguably non-derogable and any derogation must be subject to adequate oversight and judicial review. In this legal context, the PTA, which is special security legislation, which restricts a number of due process rights, must comply with the Constitutional framework and human rights standards in international law. As discussed in detail below, one of the major critiques of the PTA is regarding provisions that allow an individual to potentially be detained for up to eighteen months, without being produced before a competent court of law. This provision of the PTA is therefore incompatible with international human rights norms and the Constitutional safeguard requiring a suspect to be presented before a judge and remanded to fiscal custody.⁷¹⁸

⁷¹⁶Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979, as amended by Act Nos. 10 of 1982 and 22 of 1988.

⁷¹⁷ Human Rights Commission of Sri Lanka, 'Public Statement' (22 June 2016) <<http://hrcls.lk/english/wp-content/uploads/2016/06/Public-Statement-by-HRCSL.pdf>>; Report of the Human Rights Commission of Sri Lanka to the Committee against Torture: Review of the 5th Periodic Report of Sri Lanka, (October 2016) <<http://hrcls.lk/english/2016/11/01/the-report-of-the-human-rights-commission-of-sri-lanka-to-the-committee-against-torture-for-the-review-of-the-5th-periodic-report-of-sri-lanka/>> accessed 21 November 2018.

⁷¹⁸ The Constitution of the Democratic Socialist Republic of Sri Lanka, art 13(2).

Persons arrested under the PTA are categorized as special prisoners in prison, due to which their treatment and conditions in prison, as well as due to their arrest and detention under the extraordinary legislation, which derogates from constitutional human rights standards, they suffer a number of specific grievances during their time in detention, which are discussed in detail below.

2. Treatment and conditions of PTA inmates in prison

2.1. Access to medical care

One of the major issues faced by PTA inmates is access to medical care. As PTA inmates are considered a special category of prisoners, they require tight security when they are taken outside prison. In the case of certain prisoners, they require a squad of police/STF officers to escort the prison bus. Due to the lack of human resources and infrastructural issues at prisons, which are largely beyond the control of the respective prison authorities, many PTA inmates face problems accessing medical care. A convicted PTA prisoner at NMRP who is suffering from heart disease stated that, "We are kept in the special ward here. Even for things like medical help ... it is hard for us to go outside. There are so many rules and permissions that need to be sought for this."

As discussed in the chapter on Access to Medical Treatment, PTA inmates are housed in special cells at the Colombo PH. These cells also house mentally ill patients, suicidal inmates and condemned prisoners when they are at Colombo PH. Many PTA inmates have complained to the Commission on numerous occasions that they are aggrieved by the fact that they are being housed in a cell with no access to the accommodation facilities provided to other patients in Colombo PH. Some PTA inmates have also informed the Commission about the risks to them from the mentally ill and/or unstable patients who are housed in the same cell as the PTA inmates.

The difficulties PTA prisoners encounter when they have to be transferred to a GH are much worse. As discussed in the chapter on Access to Medical Treatment, a PTA inmate in NMRP who is suffering from lung cancer has faced a multitude of difficulties accessing medical care. In this case, the PTA inmate requires an escort by the STF/police in addition to the prison escort provided to special category inmates when they are taken out of prison. When the STF/police did not provide such an escort the inmate would not be taken to the scheduled clinics or treatments at the cancer hospital. WCP is responsible for the functioning of Colombo PH, which is accessed by all three Colombo prisons, which means that due to the high number of prisoners to be taken to GH and severe staff shortage, the procedure to take a prisoner to the GH Colombo is replete with delays and inefficiencies. The inmate would be taken from the respective prison to the PH the day prior to the appointment or the same day early morning and kept in a cell, and the next day WCP officers would escort the prisoner to GH. However, the escorting prison officers would have to wait for the STF/police escort to arrive and by the time the inmate arrives at GH, as many inmates informed the Commission, they would have missed their appointments.

The PTA inmate from NMRP who is suffering from lung cancer stated, “the officers register me and they take me to hospital but it is around noon by the time I reach Maharagama for my treatment and therefore I cannot get my treatment done.” He further stated, “if I need to go today, they will only take me after three days”, describing how the structural problems would force the prison authorities to miss or delay much needed medical care. The inmate further stated:

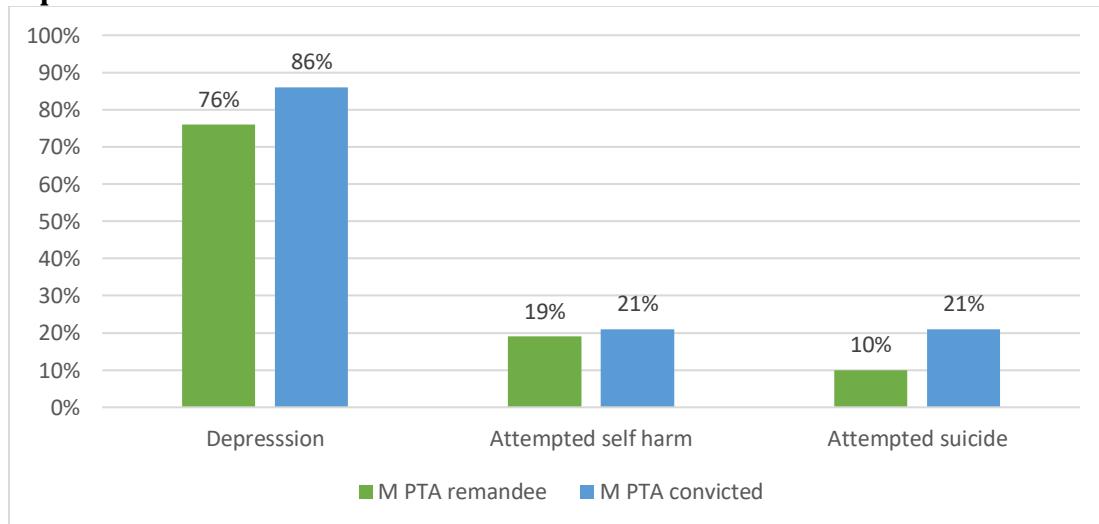
“Sometimes I have to fast and do tests. Then for the next clinic date I have to take the report. On the next date I am required to be at the clinic by 0830h. but I have never ever reached the hospital by 0830h. Sometimes when they ask me to fast for twelve hours and come for tests, by the time I reach the hospital, due to the delays, I had been fasting for more than the required time. I have this problem every time. I have lung cancer and I have to be taken to the doctor regularly. As the tumor grows my medicine also needs to be changed but the escort is a problem.”

This highlights the issues faced by PTA inmates with regards to special security required for them, which in turn has a negative impact on their access to medical care.⁷¹⁹

2.2. Mental health of PTA inmates

The following Graph (20.1) indicates the prevalence of depression, attempted self-harm and attempted suicide among the male PTA inmates who responded to the questionnaires⁷²⁰.

Graph 20.1 – Male PTA inmate respondents on depression attempted self -harm and attempted suicide



⁷¹⁹ For a comparison of the conditions of PTA inmates and other special category prisoners, please refer chapter Access to Medical Treatment.

⁷²⁰ As the study came across only two female PTA prisoners their responses are not included in the quantitative data analysis due the inability to draw any significant conclusions.

From the quantitative data in the study, 86% of male PTA convicted and 76% of male PTA remandees stated that they are suffering from feelings of depression, anxiety and sadness to the point that it interferes with their ability to perform their daily functions. In addition, 21% of PTA convicted men and 19% of male PTA remandees stated they have attempted self-harm while 21% of male PTA convicted prisoners and 10% of male PTA remandees stated they have attempted suicide while in prison. The numbers of male PTA convicted prisoners who stated they suffered from feelings of depression and engaged in self-harm are higher than that of male PTA remandees, which is explained by the fact that the average male PTA convicted man has been in prison longer than the average male PTA remandee which is illustrated in table 20.1.

Table 20.1 - Length of time in prison

	PTA Male Remandee	PTA Male Convicted
1 week – 1 month	2%	4% ⁷²¹
Up to 1 year	5%	7% ⁷²²
Up to 5 years	32%	11%
Up to 10 years	37%	46%
More than 10 years	22%	29%

Qualitative data also demonstrate that the majority of PTA inmates interviewed expressed they are experiencing some form of depression due to the long standing consequences of torture they were subject to in police custody, undue delay in the progression of their cases, the lack of meaningful activities in prison to occupy their time, the lack of family contact and the problems experienced by their families. Research shows that the effects of depression, tendencies to self-harm and attempted suicide can also lead to other negative consequences, such as substance abuse. Substance abuse in Sri Lankan prisons was not a specific focus area of this study, which requires more in-depth specialized research. An interviewee highlights the risk of substance abuse faced by long term PTA remandees and convicted prisoners thus:

“Most of us here are depressed about the outcomes and the process of our cases. So, when we are feeling really down, these other prisoners come and give us these drugs so that we can feel better, but we don’t take it. We in fact hand it over to the jailors ourselves.”

2.3. Inmate – officer relationship

As stated in the chapter on Inmate – Officer Relationship, the Commission observed that the length of time inmates have spent in prison has a distinct impact on the relationship between them and officers, with those who are long term prisoners appearing to maintain a better and more cordial relationship with officers. This was found to be true of PTA prisoners as well.

⁷²¹ The question asked “How long have you been in this prison?”. Respondents in this answer category had been sent to the prison where they answered the questionnaire recently.

⁷²² ibid

Of those in the study sample, 46% of male PTA convicted prisoners and 37% of male PTA remandees have been in prison for five to ten years, while 29% of male PTA convicted prisoners and 22% of male PTA remandees have been in prison for more than ten years. Hence, PTA inmates and the prison officers appear to share a complex relationship which at times is cordial but at times they stated became tense in tandem with the external political context. This was further corroborated by the qualitative data. In the words of a PTA remandee in NMRP who had been in remand for the past seven years:

"They [prison officers] asked us what you [the Commission] asked and what we told you. I told them that we told about the common problems in prison and that we told only good things about the prison. They said 'good.' We have been living here for so long now, so we do have to be cordial and pleasant [to the officers]."

A male PTA convicted prisoner from NMRP said that, "at first there was discrimination, but later they [officers] became good. They [used] to scold us saying we are LTTE, but they changed with time. Now they are on good terms with us."

However, according to the majority of PTA inmates, while many officers treat them with respect, some officers discriminate and subject them to racist behaviour. This state of affairs is reflected in the quantitative data, which shows that some officers in some prisons would treat PTA inmates with dignity and respect. Yet that would not remain the case for all officers, across all the prisons, over time. 51% of male PTA inmate respondents stated that prison staff treat them with respect and dignity. This indicates that the personal biases and prejudices of prison officers have a direct impact on the relationship they have with inmates, and consequently, an impact on their duties as prison officers. A convicted male PTA prisoner from NMRP stated:

"The problem is that, most of the prison officers are Sinhala. There are very few who are Tamil. Among the Sinhala officers some are very racist. Especially when they get to know we are for LTTE related cases, they are extra hostile."

Other narratives also illustrate that the relationship a PTA inmate would have with the officers could depend on the relationship they have with higher ranking officers. For example, inmates in ARP and NMRP stated that, as explained in the grievance mechanisms section below, PTA inmates have a good relationship with most SPs and CJs of the prisons at which they are housed, which prevents lower ranking officers from subjecting them to abusive behaviour.

This state of affairs is reflected in the quantitative data, which show that some officers in some prisons would treat PTA inmates with dignity and respect. Yet that would not remain the case for all officers, across all the prisons, over time. This was revealed by 51% of male PTA inmate respondents who stated that prison staff treat them with respect and dignity.

An important pattern identified through the qualitative data is that the relationship between PTA inmates and officers has developed over the years. Firstly because of the time PTA inmates have spent in prison, which means in remand prisons they have had longer contact with prison officers than the average remandee, and in certain instances even longer than convicted prisoners. Secondly, the Commission observed that PTA inmates, having spent an extended period in prison, have made a conscious effort to be regarded as orderly and disciplined by prison officers. PTA inmates would identify themselves as "not troublemakers" which has been corroborated by officers across prisons. An inmate in ARP said, "we have never caused any problems to the prison officers or the prison. You can even clarify this with SP sir." The longest serving PTA convicted prisoner in NMRP stated that:

"Being PTA prisoners, we maintain self-discipline, we have lost our families during the war and we have financial issues. These people [non-PTA inmates] give money [bribes] to the officers that can be used for the whole month in our house. It is so simple for them [unlike it is for us]."

This also highlights that PTA inmates are dependent on the officers, likely more than short-term prisoners. During the study, the Commission observed that long term inmates, through trial and error, have attempted to find the equilibrium of living in prison peacefully within the power dynamics in prison. A PTA convicted prisoner from NMRP stated that "It [degrading body searches at the time conducted by Bandha Police] happens to everyone. We do not say anything about it as we do not want to damage our relationship with the prison officers."

The narratives of PTA inmates indicate that their actions are much thought through compared to short-term inmates. A long-term inmate would feel they have more to lose by having a fractious relationship with the officers. However, this does not mean that they would be overtly passive. PTA inmates were found to be very vocal about issues, especially regarding common issues, and would raise them with confidence with the prison authorities. Moreover, another pattern identified through the qualitative data is that the relationship between prison officers and PTA inmates has generally improved over the past few years. A PTA remandee from ARP stated, "now they would come tell us how sorry they feel because we were arrested at such a young age. Earlier we were scared because of the political regime but now it's alright." Some PTA inmates referred to this as a general development of a more positive relationship between prison officers and inmates.

However, officers' actions towards PTA inmates could change due to external circumstances or the specific nature of the offence for which a PTA inmate is remanded/convicted. For example, a PTA inmate stated that "some people were detained here for the attempted assassination of XX. They were not kept with us [in the PTA ward] but were kept in an outside [normal] ward. After their ward was locked up in the evening, the officer in charge of the ward opened the gate and along with other officers, beat up the boys badly."

However, some PTA inmates stated that since independent entities, such as the Human Rights Commission, and others, such as MPs, now pay attention to the conditions of PTA

inmates in prison, they are protected from undue harassment by prison officers. For example, a PTA remandee from ARP stated, “They don’t treat us with bias now because MPs and people like you [the Commission] visit us often and officers know we’ll tell you everything. Therefore, they don’t discriminate openly.”

2.4. Inmate – inmate relationship

While the relationship between officers and PTA inmates is now one of cordiality, for the most part, the relationship between PTA inmates and other inmates is often a charged one. This is also the reason PTA inmates in almost all the prisons are segregated from other inmates. Historically, there have been numerous incidents of riots, fueled by ethnic tensions, targeting PTA inmates that have even resulted in deaths. The manner in which other inmates treat PTA inmates can vary, from everyday discrimination based on prejudice to outright violence. For example, a PTA inmate from NMRP described his experience in CRP, soon after he was remanded:

“I feel things like this should not happen in our country. The other people who were there treated me differently as they knew I was a Tamil and that I was a LTTE suspect... There was another boy [with me, who was also in prison for a PTA case]. He’s at Mahara now. They made me sleep near the toilet for the first five days. Slept there for five days... After this I couldn’t forgive [the other inmates]. Prison is a public place. It doesn’t belong to them [other inmates]. I also have a problem and a right. I don’t need to ask someone else when I have the right. Then they [other inmates] tried to create a problem but I didn’t go to fight. I told them to shut their mouth and I slept. They didn’t come to fight after that.”

A similar experience was described by a PTA remandee in JRP. These narratives illustrate that PTA inmates are vulnerable to the actions of non- PTA inmates, and this vulnerability is perhaps at the highest point when a PTA inmate is in his/her early remand days, when they would not enjoy the confidence of, nor have a cordial relationship with officers, which they develop over time.

The majority of the PTA inmates who have been in prison for more than five or ten years stated that on several occasions they had been transferred from one prison to another due to safety and security concerns, especially with regards to issues with other inmates. Especially when an ethnic conflict related violent incident had taken place in the country, PTA inmates can be targets for ‘revenge seeking behaviour’ of the mainly Sinhala prisoner population. Thus, many PTA inmates expressed the constant fear with which they still live due to past experiences. For example, on 25 and 27 July 1983, fifty-three Tamil detainees, arrested under PTA, were killed by other prisoners in a prison riot that broke out immediately after ethnic riots broke out in the country. An inquest held by the Chief Magistrate of Colombo assisted by the senior attorney of the Attorney General’s Department ruled the deaths as homicide due to prison riots.⁷²³

⁷²³ Department of Prisons, Prison Statistics of Sri Lanka, 2018, p 92.

Highlighting the risks faced by PTA inmates in prison due to tense situations outside prisons, a female PTA inmate stated “most of the other inmates still look at me as a terrorist. Since last week, things have become even worse.”⁷²⁴

The longest serving PTA inmate in the study, who is sentenced to life, and has been in prison since 1998 narrated the series of riots and murder in prisons targeting PTA inmates that he had witnessed since 1998, highlighting the vulnerability of PTA inmates and the tense relationship they have with other inmates in prison:

“We had so many safety issues in Kalutara. We didn’t even know whether we would be alive the next day...There were lots of problems and riots against us [PTA inmates] that happened [because of issues in the North and the South]. [12/12/1997] Once, the Sinhala prisoners tried to enter the cells by breaking the doors. They wanted to hit us. We all ran inside, but one guy fell on the ground. He was brutally tortured by chopping his leg with an axe.”

The many narratives of the PTA inmates illustrate that the fear for their lives is a constant in their lives in prison. Another convicted prisoner from NMRP who is housed in a ward with non- PTA inmates stated that he is in constant fear of his fellow inmates as “we are scared because they are Sinhala prisoners, we never know their state of mind. In case if there are any problems or riots, it may be life threatening to us. It’s not difficult for them to beat us or to kill us.”

Even though to a certain extent physical segregation in prisons would lessen the everyday issues, in instances where large scale violence, such as a riot targeting PTA inmates takes place, PTA inmates are at the mercy of the prison authorities for protection.

2.5. Access to grievance mechanisms

PTA inmates’ access to grievance mechanisms in prison is correlated to their relationship with prison officers. As stated previously, given the years they have spent in prison, like the prisoners on death row, PTA inmates are more likely to have developed a cordial relationship with prison officers and hence would be able to report their grievances. Further, due to the long periods of time spent in prison they are also more knowledgeable than others prisoners about how to bring their grievances to the attention of relevant officials. For example, a long-term PTA convicted prisoner at NMRP stated that, “if we have an issue with normal officers, we can inform the SP or the CJ. Most of the time, they [officers] are afraid that we will inform the SP or the CJ [about the issues we have] when they come on rounds.” The Commission observed, especially at NMRP and ARP, that the PTA inmates considered the SP and CJ at the time to be highly responsive to their grievances. It must also be noted that in both prisons the SPs and the CJs were supposedly making regular rounds, during which the PTA inmates were able to speak to them regarding the issues they face.

⁷²⁴ The female PTA inmate is referring to an incident where on 22 June 2018 a cache of arms, ammunition and explosives alleged to have connections to the LTTE were discovered by the police in a trishaw, in Oddusudan, Mullaitivu.

In all prisons where a group of PTA inmates are housed, a higher level of unity amongst the group was observed during the study, especially with respect to ensuring that their grievances are taken into account. For example, one male remandee from NMRP stated that, “since we are PTA prisoners, we maintain unity amongst us. If there is a problem faced by one person, we all stand by that person.” Another remandee housed at ARP said, “we have good unity among us here”.

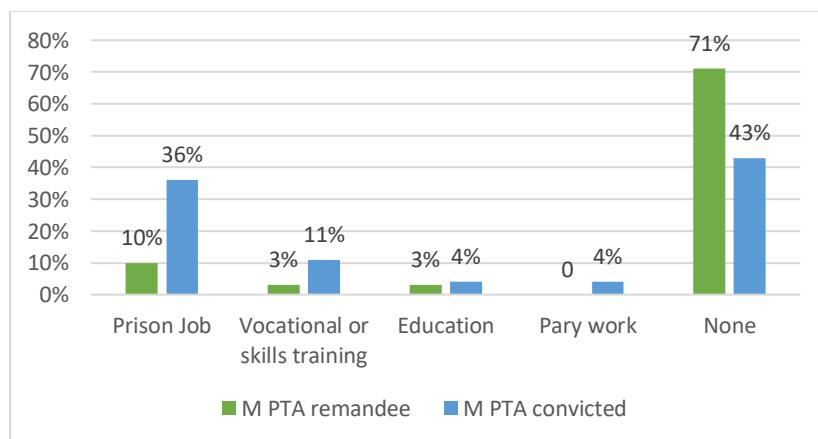
PTA inmates also engage in hunger strikes to draw attention to common issues they face, such as long delay of trials. The Commission has also observed that when PTA inmates engage in hunger strikes for issues related to their cases, they give prior written notice to the prison, which they state is done to ensure that prison authorities are not inconvenienced and are prepared. A male PTA remandee from NMRP stated that, “those hunger strikes were not for individual purposes, but was done for a common purpose, by all political prisoners.”

PTA inmates from across prisons stated that their political representatives and MPs are expected to be responsive to their grievance and that they send letters to their political representatives through the prison authorities in an attempt to bring attention to the issues they face.

2.6. Rehabilitation in prison

Graph 20.2 below indicates that the large majority of PTA remandees and convicted male inmates are not involved in any vocational/skills trainings, educational opportunities or prison work. The quantitative data is corroborated by the qualitative data that is discussed in each thematic sub-section below.

Graph 20.2 – Male PTA inmate respondents across prisoner categories who engage in some sort of a prison work or skills development⁷²⁵



⁷²⁵ Of the two PTA convicted women in our study, one engages in a sewing class in PCP while the other engaged in sewing party at WCP.

Vocational/skills training

Although PTA inmates are held in remand for extended periods of time, the prison authorities, as discussed in the Rehabilitation Chapter, are not required to provide any educational, vocational or skills training to remandees. This means a person who has been in remand for ten years would not have acquired any meaningful skills that would help them rehabilitate and socially reintegrate successfully at the end of their incarceration period. Even convicted prisoners, who should be able to access such programmes, faced challenges as explained by a PTA convicted prisoner from PCP who stated, “since the courses takes place in Sinhala, I can’t take part in the course. I cannot read or write Sinhala.”

In the study, 11% of PTA convicted men and 3% of PTA remandees stated they engage in vocational/skills training. It must be noted that 3% consists of the PTA remandees in ARP who participate in the arts and crafts class, with special permission from the SP. The PTA inmates across prisons expressed their wish to learn and improve their skills. The Commission came across a few inmates that engage in handicraft activities of their own initiative, which they believe, provides them with immense mental relief. For example, a PTA remandee in ARP uses raw materials provided to him by both the prison and his family to create various items. In a rare example, this inmate also participates in a handicraft class held at ARP. In addition, the Commission also came across many PTA inmates that produce small bags and purses with the use of plastic and polythene biscuit wrappers. These items are then given to their family members when they visit.

A male convicted PTA prisoner at NMRP pointed out that the flaws in the current system of incarceration, where both the inmate and the society lose valuable time and human resources, are spent unproductively. The convicted prisoner highlighted that the current system is not designed to achieve any rehabilitation or reform:

“In my opinion they just want to imprison people and then free them when the time comes. They have no intention of reforming them. [For example,] the Tamil political prisoners would actually like to have some form of education or job training [because we have been in prison for such a long time]. We have even requested for it but we haven’t received anything.”

Prison work

The perception of a PTA inmate as being connected to the LTTE and being implicated in LTTE activities can also have an adverse impact on their prison work conditions. For example, one male convicted PTA prisoner from NMRP who is currently on appeal stated:

“After I got my sentence, they took me to Welikada prison where they kept me for ten days. During the last three days they assigned me to rattan party, where I was making canes. There too I was told that I’m being punished for killing their [Sinhala] people. They said they would have even assaulted me if I was younger but since I was old, they told me to make canes in the hot sun for three days. After coming here [NMRP], I was sent to laundry party, where for two

weeks I had to wash bed sheets and other linen, but after that I got my notice of being an appellant, so they stopped giving me work."

While the conditions of prison work in general are not satisfactory and not in line with accepted labour standards, as discussed in the chapter Prison Work, in this instance, the prisoner alleges that he was subjected to discriminatory treatment during his prison party work because he was identified as a PTA inmate.

In NMRP, the Commission observed that several PTA inmates work in kitchen party and laundry party. 10% of PTA male remandees said they are engaged in a prison job owing to the fact that certain long term remandees at NMRP had volunteered to assist officers in the RC Branch. It must be noted that the majority of PTA inmates in the study sample were drawn from NMRP, where the large majority of PTA inmates are housed. NMRP being a remand prison that does not hold any other convicted prisoners except PTA convicted prisoners, does not have a well-structured vocational/skills training programmes or party work like in closed prisons or other remand prisons where a large number of convicted prisoners are housed.

The two PTA female inmates in the study were both engaged in some work. One female PTA prisoner was engaged in the sewing party in WCP, while the other was involved in the weaving party at PCP. More convicted male PTA prisoner respondents have stated they are involved in a prison job, vocational/skills training or party work, compared to male PTA remandees. This is explained by the fact, that the prisons are not expected to provide vocational/skills trainings to any remand prisoner, and cannot use them for prison labour, unless they volunteer.

Education

While generally there are limited education opportunities available to inmates across prisons, as discussed in the chapter on Rehabilitation, the access of PTA inmates to such opportunities, especially remandees, is even more restricted. A PTA remandee from NMRP stated, "I keep asking them to allow me to do some courses but they are not making arrangements for that. If they have language courses, we can do that." A PTA remandee in CRP said, "here XX master (fellow remandee) conducts an English class. I participate in it."

The lack of access to vocational/skills, educational and prison work is a structural issue, as prisons are not expected to provide remandees with such opportunities. Yet, data in our study demonstrates that the majority of the PTA remandees who have been in prison for more than five or ten years, have spent more time incarcerated than many convicted prisoners.⁷²⁶ A convicted PTA prisoner in NMRP stated thus:

⁷²⁶ In our study, 44% of the convicted men have been in prison for one month to- one year, 30% have been in prison for one -to five years, 10% have been in prison for less than a month. However, 37% of the PTA male remandees have been in prison for five to ten years while 22% of PTA male remandees have been in prison for more than ten years. 46% of PTA convicted men have been in prison for five to ten years and 29% for more than ten years.

"The Tamil political prisoners would actually like to have some form of education or job training. We have even requested it but we haven't received anything. They have not taken any action regarding that. They should provide education and training to prisoners who would like to learn."

Across prisons PTA remandees and convicted prisoners stated that if they can engage in vocational training that can prepare them for in-demand work, such as plumbing, electrical work, motor mechanic work, computer, TV, A/C repair, they would be able to provide for their families once they are released from prison. Even though DOP is not expected to rehabilitate or reform remandees, as they are deemed unconvicted, the narratives of PTA remandees point to the importance of being able to reintegrate into society with meaningful skills, after being in prison for the better part of their adult lives.

Release of rehabilitated prisoners via Home Leave and License Board⁷²⁷

PTA prisoners too are eligible to home leave and license board release. In BRP, the Rehabilitation Officers informed the Commission, that a certain PTA convicted prisoner, who had been assigned to take care of the Hindu temple in the prison was released on license. Upon inquiry, the Rehabilitation Division of NMRP stated that multiple prisoners convicted under PTA have gone on Home Leave and been released on license. The Rehabilitation Officer also explained that the only procedural difference of a PTA convicted prisoner and another convicted prisoner is that in the case of the former obtaining a positive police report is mandatory. The focus of the police report is the family of the PTA convicted prisoner whom the police have to investigate and clear of having or suspected of having any connections to the LTTE or any other terrorist activities. Some PTA inmates stated that their family members were also arrested and detained with them and were released after some months or were remanded and thereafter released. Hence, they would not qualify as 'having no connection to the LTTE' or 'not having been a LTTE suspect', which would result in the prisoner losing his opportunity to go on Home Leave or via License Board. According to the Rehabilitation Officer, there are those whose police reports on their families have come as 'clean of LTTE activities' and hence have gone on Home Leave and License Board.

While a background check of the detainee can be deemed necessary before they are released early on license, the need to clear the prisoner's family of connections with the LTTE raise concerns with regards to presumption of innocence and inherent prejudice and bias, where the family of a prisoner – who is considered to be rehabilitated and fit for release back into society is looked upon with suspicion.

⁷²⁷ For a detailed discussion on Home Leave and License Board schemes, please refer chapter Early Release Measures.

Difficulties in successfully reintegrating to the society

When a convicted prisoner is sent on Home Leave, he is given a chance to begin preparing to reintegrate into the society, while a convicted prisoner released on license is expected to be fully rehabilitated and able to reintegrate to the society. According to the Rehabilitation Division of the DOP, this is the reason why, across prisons, the rate of recidivism and the number of Home Leave or license violations are very minimal. It was noted that PTA prisoners overwhelmingly feared that they would not be allowed to socially re-integrate and rebuild their lives even post-release. As described by a PTA remandee in ARP:

“The TID themselves have told me that they will keep me in prison as long as they can and get all the revenge that is possible and even if we manage to get out [acquitted or released after serving the sentence] they would not let us live peacefully.

I have heard recently that the TID have been informing about us to the family members of the dead army personnel. The family doesn't know what the actual truth is. There will at least be one person who would want to take revenge on us. They might try to kill us and make it look like an accident. I am scared for my life. I know there is a 90% chance that I will be killed if I go out.

So, I want to know, what you can do to protect my life. I don't have problem inside the prison [so far] because I am still in remand for my case, its only when I go for my case, there will be a problem.”

Some PTA inmates, out of fear, inquired from the Commission whether they can be in contact with the Commission in case their fundamental rights are violated or if they fear impending violation upon release.

Serving a long prison sentence or being incarcerated for a long time results in social isolation, which makes social reintegration a challenge. Added to that, PTA inmates face further difficulties because of the nature of the law that has been used to, and in many instances abused and misused to arrest, detain and prosecute them. If they have to live in constant fear, post release, it places into doubt whether the purpose of incarceration, which is expected to result in rehabilitation and successful social reintegration, is fulfilled.

3. Interrogation and investigation while in remand custody

The qualitative data gathered during the study revealed that while in remand custody some PTA inmates were taken out of prison to other locations, both authorized and unauthorized places of detention, for interrogation by the arresting authorities, such as the Terrorist Investigation Department (TID) and Criminal Investigation Department (CID), under section 7(3) of PTA. Specifically, PTA 7 (3) (a) states that:

A police officer conducting an investigation under this Act in respect of any person arrested under subsection (1) of section 6 or remanded under subsection (1) or subsection (2) of this section;

(a) shall have the right of access to such person and the right to take such person during reasonable hours to any place for the purpose of interrogation and from place to place for the purposes of investigation;

Provision 7 (3) does not state the period for which a person can be detained for interrogations, once s/he is taken out of remand. Further, the provision does not provide the maximum period a person can be held. For example, it does not specify whether a person can be held for more than eighteen months for interrogations, once s/he is taken out of remand. Additionally, the provision gives wide discretionary powers to the interrogating authority to take "any person" "on remand" "to any place for the purposes of interrogation".

PTA inmates informed the Commission that they were physically ill treated when they were taken out of remand custody for further interrogation. A male convicted PTA prisoner from NMRP stated that:

"After they remanded me, they took me back to their custody for seventy two hours, with permission from the Magistrate Court. It was XX/11/2000. They tortured me so badly...after four days I was produced to the JMO. [ten days after they took me from prison] they brought me back to Kalutara prison.

The CID then again took me [for the second time] into their custody on XX/12/2000. They took me and my wife out [from remand] and obtained our confessional statements. They tortured me again when they took me into their custody [from remand]. After four days they took me to the JMO on XX/XX/2000, and brought me back to Kalutara prison on the same day. I had fresh wounds on my hands.

Then for the third time, CID took me again into their custody on XX/12/2000, [after three days] they produced me before the JMO. JMO noted down all of my wounds. On the day they produced me before the JMO, they brought me back to Kalutara prison.

CID took me the fourth time on XX/12/2000, tortured me, took confessional statements from me and produced me to the JMO after three days, and brought me back to the prison on the same day."

Taking a prisoner out of remand custody for interrogation raises many concerns regarding judicial oversight as well as responsibility for the physical integrity of the prisoner and accountability in the event of any ill-treatment. Prisons are responsible for persons remanded and/or convicted by a judge and sent to fiscal custody. Hence, the prison authorities are accountable to the judge/court that has remanded/convicted the person, for their well-being. Yet, when a person is taken out of prison for interrogation by a third party,

the prison authorities have no control over what happens to the person. As the two examples given above illustrate, in such instances there could be concerns regarding which authority can be held accountable for the well-being of the prisoner due to the lack of clarity regarding the responsibility of the prison authority and police. This is particularly relevant where ill-treatment is concerned because this would then make it challenging to determine whether injuries inflicted on a PTA remandee were inflicted by prison officers or police officers. For instance, there is no requirement to conduct a physical examination and record visible injuries both before and after PTA prisoners are taken out of prison custody for a police inquiry. Yet, if a person who is taken out of prison for interrogation is brought back to the prison after having suffered severe torture and the impact of torture results in death in prison, the prison authorities would be liable, as the death has taken place in their custody. Moreover, the prison authorities, as per law, are expected to inquire about torture upon admission because they do not wish to be held liable for death or damages that could be a result of assault prior to remand⁷²⁸.

Upon inquiry, the CJ of NMRP stated that in his experience a PTA inmate was released to the custody of TID/CID/Police only after the prison was provided with a court order to that effect. The longest serving prison officer in Kalutara prison affirmed that they have never released a PTA inmate to the custody of a third party without a court order. The prison is however not provided with details of the interrogating authorities, as the court order would only state the inmate had to be handed over to XX for interrogations. The order also did not specify the places of detention or the period of such detention. This practice indicates that the PO Section 99 mentioned above is the only procedure followed in such instances. It should be noted there is no stipulation that the interrogating authority should notify and seek the permission of the court which remanded the person or any court if the interrogating authority transfers the person to a place of detention, different to the one to which the person was initially taken, or that the court and/or prison should be notified of such transfer when the person is brought back to prison.

This highlights the lack of procedure regarding the chain of custody of an inmate who is taken into administrative detention while in remand custody, possibly held in multiple places of detention, and is brought back to prison. Further, it creates space for abuse by the interrogating authorities who can take persons out of remand for interrogations as many times as they see fit, thereby bringing the person within the system of administrative detention, and thereby undermine the purpose of judicial custody and the safeguards it provides. It should be noted that although the person is taken out of judicial custody and into what for all intent and purposes appears to be administrative detention, no DO is issued, nor is the person produced before a judge every fortnight as any other remandee. Hence, it appears the detainee inhabits a legal black hole during this period and doesn't enjoy any procedural safeguards.

The male convicted prisoner in NMRP who was taken out of prison four times further stated that after the fourth round of interrogations by the CID, while in remand, he informed the prison officers that he was unable to bear the torture anymore. He stated:

⁷²⁸ For a detailed discussion, please refer chapter Entrance and Exit Procedure.

"After that, unable to bear the torture, I made a complaint to the Kalutara prison authorities saying that I do not want to be tortured by CID again. The officers then forwarded my complaint to the court, and the judge ordered that CID should not torture me and that the prison officers should give me protection.

In another instance, a PTA remandee at ARP, who was also taken four times from remand for interrogations, stated:

"...at my last interrogation they [CID] beat me up. Therefore, once I arrived back at prison, I complained to the prison officers. I informed the SP XX. He sent a letter to the judge through the Welfare Office. Then the judge ordered the jailors at the prison to take a statement from me regarding the assault and that if necessary, they [CID] should come here [to prison] and interrogate me [in front of prison officers]."

These two examples highlight the pivotal role of prison officers in ensuring the well-being of persons legally in their custody, and the importance of judicial monitoring to prevent ill-treatment. While according to the NMRP convicted prisoner's narration, the prison officers did not stand guard with the inmate but left at the request of the CID officers, their mere presence in the vicinity resulted in the inmate's fundamental right to be free from torture being protected. The PTA remandee at ARP also stated that he was no longer subjected to torture during interrogations and that no such interrogations took place after the judicial order that prison officers should monitor interrogations. The potential pivotal role prison authorities and the judiciary could play to address the gaps in the law and the lack of procedural safeguards, in order to ensure a person's fundamental rights guaranteed by the Constitution are upheld, is an observation made during the study.

Another provision of the PTA, Section 15A, which was brought into being via the Prevention of Terrorism (Temporary Provisions) (Amendment) Act 10 of 1982 gives discretion to the Secretary Defence to determine the place of detention even after a person has been remanded if the Secretary deems it 'necessary or expedient...in the interests of national security'. The powers given to the Secretary in this instance are wide as s/he can order that the person 'be kept in the custody of any authority, in such place and subject to such conditions as may be determined by him having regard to such interests'. The provision doesn't set out any criteria for making this determination, and the decision is not subject to judicial review either as the order is only required to be 'communicated to the High Court and to the Commissioner of Prisons'.

During the study the Commission came across three individuals who said they had been detained at various places of detention, such as Boossa and the TID sixth floor, under **these provisions**, and all claimed that during their detention period they were subjected to torture. One of them was held in such places for close to seven years.

4. The role of the Judicial Medical Officer in identifying and preventing torture

"We should have been taken to a JMO at the time that we were beaten. If they documented our wounds and if we knew the language, we could have done something. They speak only Sinhala and we are Tamil. We don't understand anything at all. Before we were taken to the JMO, the officers would say 'don't tell them anything. Just say yes or no to everything they ask. If they ask if you were beaten, say no. If they ask if you were provided with food and if we looked after you well, you should say yes.' That's what we would go and say. If not, they would come back and beat us again."

Convicted, NMRP

The provisions of the PTA allow the period of administrative detention to be extended, without the need for a judge to examine the continued need for detention, thus removing the important requirement for a detainee who is held in police custody to be produced before a judge. Since prolonged administrative detention can reduce opportunities for a judge to maintain oversight of a detainee's wellbeing, the JMO plays a crucial role in ascertaining whether a detainee was subject to torture during the period of administrative detention. In the case of PTA detainees, where it was overwhelmingly reported that they were subject to torture and forced to provide confessions during administrative detention, it is integral that a JMO is able to place on record the conditions under which a detainee made a confession. The PTA detainee would allege torture when they face trial many years later, but the detainee may not be able to prove their allegations as many injuries may have healed over time. As a result, an independent and clear assessment by a JMO is necessary as it determines the credibility of a detainee's confessions.⁷²⁹

In response to whether they were produced before a JMO after being subjected to torture and if provided with medical care afterwards, only 44% of respondents stated they were produced before a JMO while only 38% of men was given medical treatment after they were subjected to torture.

The Commission observed a pattern in the data whereby detainees would be produced by the TID and CID officers to a JMO, often before and after they signed the confession. PTA interviewees informed the Commission that first the arresting officers would warn them against disclosing the truth about the ill-treatment they suffered to the JMO, threatening them with further torture. Alternatively, they would produce a detainee before the JMO and force him to lie to the JMO and say he had already signed a confessionary statement, even when he hadn't. Following the examination by a JMO, the detainee would be returned to Colombo TID/CID and forced to sign the confession while being subject to physical violence.

⁷²⁹ For a detailed discussion on the role played by a JMO when detainees have been subject to torture in custody, please refer chapter Access to Medical Treatment.

According to a PTA remandee from ARP:

"Before I signed, they took me to the JMO. They took me to the JMO in Colombo. The doctor was Sinhala, but the nurse could speak a little Tamil. They asked me what had happened. I told them how they were beating us and how they had brought me to Colombo to get my confession by beating me. I said I didn't want to give a statement as they would write things they want and make me sign it. The nurse who was listening to all of this, told everything I said to the TID. The doctor gave the form to the TID. After that they sent me out. Then the TID and the nurse were talking to each other in Sinhala. I understood that they were talking about me. The TID kept staring at me. The TID then brought me back to sixth floor. They came and beat us. He said 'you can't say random things to the JMO. You can only answer the questions they ask you. You are not allowed to make additional conversation with them'. He told the Muslim officer to translate it to us. He was beating us at the same time."

When detainees were produced before a JMO by the police the Commission was told of several cases in which allegedly the JMOs did not perform their duties and/or there was interference by the police in the JMO examination. For instance, it was reported that officers would be present in the room in which the JMO would be examining the detainee, and this would naturally restrict them from disclosing the truth.

The JMOs themselves, allegedly, would not ask any questions about any ill-treatment the detainees suffered in detention, and at most they would ask their name, and concluded the examination within minutes. Strong indications of collusion between the JMO and arresting officer were observed in the narratives of the detainees. Inmates stated that when they informed the JMO they had been tortured in custody, the JMOs would ask them not to complain, or inform them about such incidents. Based on the commonalities in the narratives of persons who were examined by the JMO, it seems the officers produced a person before the JMO to prevent any potential allegations of torture being inflicted during investigation from being raised at the trial, by placing an inaccurate Medico-Legal Report on record. As a prisoner explained it:

"The CID officers asked the doctors not to mark the severe wound and we had been threatened not to tell or disclose anything about the assault or torture to the JMO. They (CID) said if I tell anything to the JMO they can throw me in the Kelaniya River or can kill me in prison. They took me to a doctor and told her we were PTA detainees and we should be shot and it was wrong for us to be produced before a JMO. They told her to write a report without mentioning the wounds."

PTA Life Prisoner, NMRP

PTA prisoners also complained about the lack of Tamil speaking JMOs in the system and many inmates were reportedly unable to communicate with the JMO due to language barriers:

"About six months and three days later, before leaving to court, they took me to a medical officer but we could not say anything to him as he spoke only Sinhala and we didn't know Sinhala, so what could we tell them? CID officers would be right next to us, so we couldn't even communicate using hand signs. They wrote only what the CID officers told them. None of them knew Tamil."

PTA Convicted, NMRP

However, even where translators were provided to the detainee to facilitate the JMO examination, this did not lead to a satisfactory outcome, as narrated by a PTA Remandee, ARP:

"Once they took us to the JMO. They registered our name and age. One Muslim person accompanied me. She [JMO] spoke in Sinhala. The Muslim person translated it for me. He was not an officer. He was just another prisoner who was there. He knew Sinhala. The doctor checked us. She asked for our name and age. Then she asked if we have any illness. I told her that they were beating us. Then she asked the officer to stand outside. Only the other Muslim prisoner was there. Then she asked me what my problems were. I told her how they were beating us during every interrogation and showed her marks from the beating. She listened to everything, but she never recorded anything. In that page only our name and age were written. It was written in English.

Q: Did she ask you if you were beaten?

A: Yes. We told her that we were beaten by officers from different entities every time during interrogations and we asked her if she could do something about it but she never recorded any of it. She should have written what we said, but she didn't. They brought that paper back to Boossa. They could then write whatever they want in it. They would have probably written that I was healthy, had no injuries and was in good mental health condition. I think that doctor was for the TID and CID. Otherwise she should have written what we said and complained on our behalf."

On the other hand, some JMOs reportedly carried out their functions with integrity, despite the direction of the CID or TID officers and offered assistance to the detainee. A remandee from ARP stated that:

Q: "Did you tell the JMO that you were assaulted?

A: Yes. Yes. He asked us how many people were hit. I told him there were six more boys and including the two of us there were eight. He then asked us to go to court and told us he will forward the report to the court."

"The CID officers told me to tell the JMO that I sustained these injuries after slipping and falling in the bathroom. I had a wound on my right forehead. I did as I was told but the JMO told me to tell the truth and that he will not tell the

CID. I told him the truth and he asked me to get an x-ray and gave me the medicines, and then they gave me a card which said that if I feel sick or if I am unable to hear to bring me for treatment. I was unable to hear at the CID and I asked them to take me to the doctor but they refused. They did not give me the x-ray and threw away the diagnosis card."

PTA Remandee, NMRP

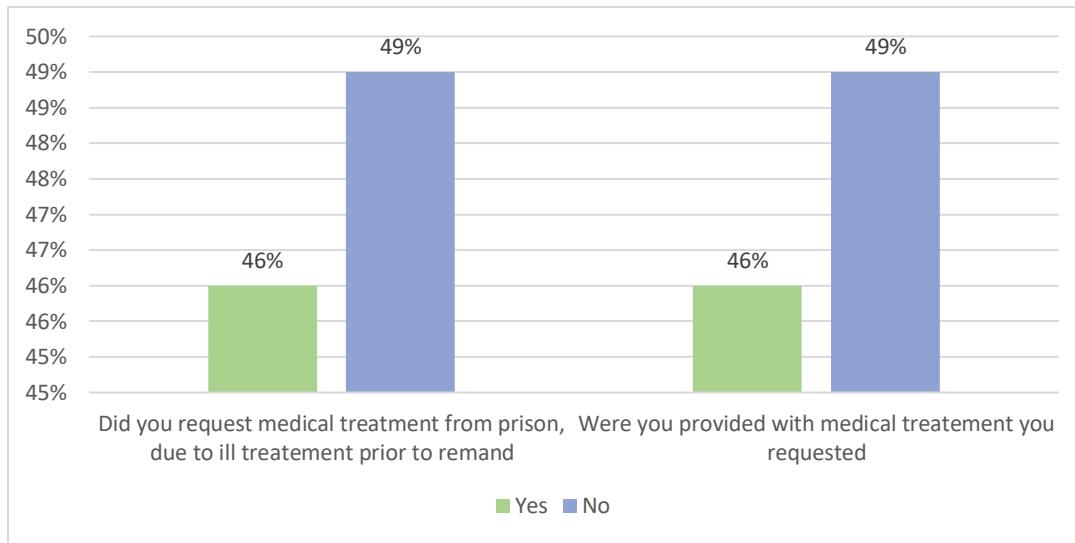
5. Post- assault context – identifying and treating torture: recording assault upon admission to prison

As discussed in the chapter Entrance and Exit procedure, SMR 7(d) requires prisons to record any visible injuries and complaints about prior ill treatment, upon admission. Prison authorities are thus expected to inquire from PTA inmates, upon admission to prison, about any ill treatment or torture they have experienced at their places of detention prior to remand, as they are expected to inquire about ill treatment from any other new entrant.

Quantitative data from the study reveal that across prisoner categories, the overwhelming majority of PTA inmates have experienced ill treatment at the police/by the arresting authority, with the percentage being 92%. However, only 15% of the male PTA inmates had been asked about ill treatment upon admission to prison. It should be noted that this is much lower than the total prisoner percentage that stated they were inquired about ill treatment by the police/arresting authority upon entrance to the prison, as mentioned in the chapter on Entrance and Exit Procedure where 49% of the men stated that they were asked about ill treatment at the police station.

In addition, qualitative interviews highlight the lack of procedural safeguards with regards to inquiring about ill treatment by the arresting authority in place in prison, especially with respect to PTA inmates. The quantitative data, corroborated by the qualitative data, calls into question the procedure in place at prisons, and the reason the majority of PTA inmates would not be asked about ill treatment.

Graph 20.3 – Male PTA inmate respondents who required medical attention upon admission due to the ill treatment they suffered by the arresting authority/places of detention⁷³⁰



Graph 20.3 illustrates that of the PTA male inmates from whom the prison inquired about ill treatment, 46% had requested medical treatment. Of those who had requested medical care only 46% received treatment.

6. Legal and judicial proceedings

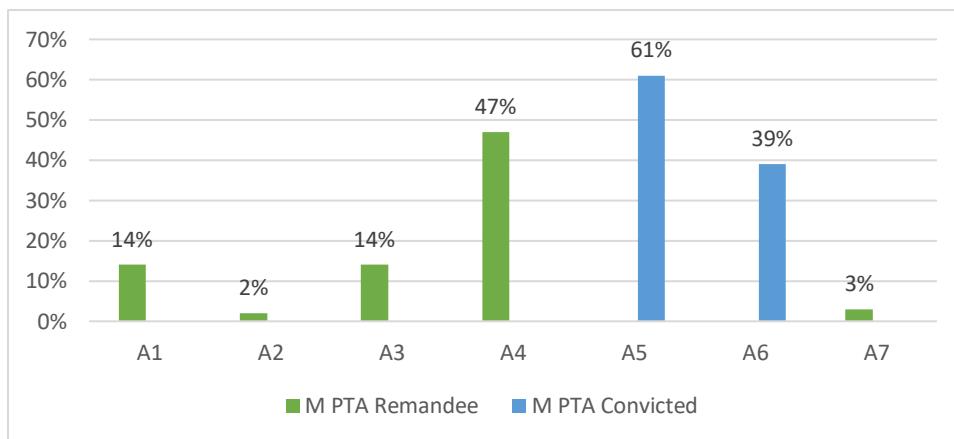
"This happened in Vavuniya High Court and the judge said he cannot punish someone for the same crime twice and he released me on bail. The judge told me to continue my job and I did so and came to courts once a month for the case. They read me the indictment only on the sixth visit. I did not take that into consideration since I believed I would get justice. On the first hearing the judge said that since I have been to rehabilitation for two years, we can consider that as a deserving punishment and release me. They did not remand me since I had exam work at the university. The next week they gave me a life sentence saying that the prosecution wants me to be punished. This was a big shock which I still have not overcome."

PTA Life Prisoner, NMRP

⁷³⁰ Responses to "Did you request medical treatment from prison, due to ill treatment prior to remand?" are taken only from those who said yes to "Did the prison authorities inquire from you whether you were ill-treated at the police/detention place?"

Responses to "Were you provided with medical treatment you requested?" are taken from only those who said yes to "Did you request medical treatment from prison, due to ill treatment prior to remand?"

Graph 20.4– Male PTA inmate respondents on the current status of their case



A1 – B Report filed in court

A2 – Investigations concluded, file sent to AG's department

A3 – Indictment has been filed, trial has not yet begun

A4 – Trial is ongoing

A5 – Convicted

A6 – On appeal

A7 – I don't know

The quantitative data show that the majority of PTA remandees are at the stage where the trial is still ongoing. The qualitative narratives explain the quantitative data further, where a number of patterns were observed in the experience of legal and judicial proceedings relayed by PTA prisoners, which are set out below.

7.1. Access to legal representation

The lack of access to competent legal representation was noted to adversely impact the rights of persons arrested and detained under the PTA.

The right to legal representation and, where a person may not have sufficient means to pay for it, legal aid, is stipulated in Article 14 of the ICCPR and in the national legal framework, under Section 4(1) of the ICCPR Act (No. 56 of 2007).

In national law, the CCP also sets out the right of a defendant to be represented by a lawyer.⁷³¹ Section 195(g) of the CCP states the judge shall assign an Attorney-at-Law upon the defendant's request in the High Court and Section 353 states a judge may assign a lawyer to the appellant in the Court of Appeal 'if, in the opinion of the court, it appears desirable in the interests of justice that the appellant should have legal aid'.

PTA prisoners informed the Commission about the difficulties they encountered in accessing and acquiring legal representation, which began at the start point of the detention period and continued to the trial stage. For instance, the Commission was informed that lawyers would have to obtain written permission from the Director of TID in order to visit their

⁷³¹ Code of Criminal Procedure Act No. 15 of 1979, s 260.

clients in detention and in most instances, permission would take weeks or even months to be granted. Thereafter, following indictment, due to the stigma attached to PTA cases, lawyers were reportedly reluctant to represent PTA detainees. As an inmate from ARP stated:

“I did not have any Tamil lawyers. I got a Tamil lawyer for one hearing. After that, he also said he is scared and did not come again.”

Due to the prolonged length of time taken to conclude PTA cases, inmates stated they could not afford the legal fees and were therefore reliant on legal aid. As demonstrated by table 20.3 many PTA prisoners were dependent on mainly one civil society legal aid organization for legal representation.

Table 20.2 - Male respondents on who pays for their lawyer

	Male PTA inmates
I pay for my lawyer	7%
My family pays for my lawyer	44%
The court appointed a lawyer for me	4%
A legal aid organization provided me with a lawyer	39%

Where PTA detainees could not retain private lawyers or legal aid, they would have to be assigned counsel by the court. PTA prisoners stated that state-appointed lawyers would not appear on trial dates and secured delayed court dates, which would prolong the duration of the trial. The lack of Tamil-speaking state appointed lawyers further restricted the ability of persons to prepare a vigorous defense with their lawyer and to receive explanations about court proceedings from the lawyers. The perception surrounding state-appointed lawyers and their non-appearance in court is discussed further in the chapter Access to Legal Representation. Prisoners describe this as follows:

“The trial in High Court went on for four years. The problem was the people who appeared for us didn't know Tamil and we didn't know Sinhala. We didn't know what was happening in court. We didn't have enough money to retain private lawyers as we were displaced due to the war, tortured...”

Convicted PTA, NMRP

Detainees stated that their lawyers did not visit them in prison and since prisons, except WCP, do not provide telecommunication facilities for contact with legal representatives, it adversely impacted the quality of a defense that was prepared without adequate consultation with the detainee. PTA detainees are usually held in prisons outside their hometown, and hence would not have local contacts to communicate with the lawyer on their behalf. This was exacerbated by the fact that reportedly lawyers would speak with inmates only for a few minutes before the trial in court. Detainees also stated that their

lawyers would not attend all court hearings and would sometimes send junior lawyers in their stead. Every time a lawyer is absent from the hearing, the case would be postponed for another few months and the trial further delayed.

While complaints against the non-attendance of lawyers in court and their minimal consultation with a defendant in court were also received from non-PTA prisoners⁷³², the need for competent legal representation is dire in the case of PTA detainees, as they spend a prolonged time in pretrial detention:

“The courts accepted my confession saying that we gave it without coercion. We appealed against the decision, but there was confusion: some lawyers told us not to appeal as then the case will prolong for years. Some lawyers said we should appeal. We thought there is no use of appealing, as people spend many years on appeal without any action taken. Even then, we cannot be sure whether we will get the decision in our favor. The judges and the lawyers are all Sinhalese and we have to hire a Sinhala lawyer for the case as well.”

PTA Life Prisoner, NMRP

When lawyers from civil society legal aid organizations were discussed, inmates stated that while many of them sent their junior lawyers to visit them in prison initially, thereafter junior lawyers would visit them only to obtain signatures on documents. Prisoners stated that lawyers of civil society organizations, like state appointed lawyers, didn't visit them in prison to discuss the defence strategy, consult with them to prepare the defence or provide an explanation to detainees about the progress of the trial. Prisoners stated that the only opportunity they would have to obtain information about their case was during the few minutes they consulted with lawyers in court prior to the proceedings. Civil society legal aid organizations were hence accused by prisoners of being unresponsive, not completing procedural matters related to the case promptly, and failing to prepare the defence with the level of care and attention required. As a result, a number of prisoners were deeply unsatisfied with the quality of legal representation, and believed that the lack of competent legal representation adversely affected their trials. They believe that if they had the financial resources to retain private counsel they would have been able to mount a rigorous defence. As explained by a convicted prisoner at NMRP:

“I don't know what he did in terms of my appeal, he did not meet me. He keeps telling me he had made all the arrangements for the appeal but I don't think he had made the necessary arrangements. He does not visit me here also and I did not get any letter from the courts regarding my appeal.”

PTA Convicted, NMRP

7.2. Prolonged pretrial detention

“My youth is wasted here. If I had committed a crime and was sentenced because of that, I would be content with it but I am serving a sentence just

⁷³² For a detailed discussion, please refer chapter Access to Legal Representation.

because I was friends with LTTE cadre. I will have to start at the bottom when I go out. I am planning to leave the country, as I am scared they will arrest me for more crimes committed by someone else."

PTA Convicted, PCP

The right to trial without undue delay is a key component of the right to a fair trial, as affirmed by the ICCPR.⁷³³ The right to a fair trial is also guaranteed by Article 13(3) of the Constitution of Sri Lanka.

Section 7(2) of the PTA directs Magistrates to issue an order of remand whereby the detainee is imprisoned until the conclusion of the trial, with the award of bail subject to the consent of the Attorney General. Of all the prisoners, most were remanded only after spending at least ten months on average in administrative detention, with the longest reported period being twenty-nine months (the inmate included the time spent in army camps/rehabilitation camps prior to being arrested by TID and kept in administrative detention). As mentioned above, the administrative detention period was concluded and the detainee was produced before a Magistrate for remand once a confession was obtained.

Since PTA prisoners spend a long period in detention before being produced before a judge, and then remain in remand until the conclusion of their trial, PTA prisoners spend a prolonged period of aggregate time in detention from the time of arrest, awaiting the conclusion of their trial. Based on the statistics provided to the Commission by the DOP⁷³⁴, the total number of PTA prisoners held in the prisons is 121, of which seventy one prisoners are remandees. Of these seventy one prisoners, fifty five have been indicted and their trials are ongoing, while sixteen prisoners have not been indicted yet. The table below outlines the number of years spent in remand by PTA prisoners.

Table 20.3: Number of years spent in remand by PTA prisoners⁷³⁵

Less than 6 months	6 months – 1 year	1 year – 5 years	5 years – 10 years	10 years – 15 years
1	7	23	29	11

The Commission learnt that the longest period a person has been on remand without indictment is fifteen years. The longest period a trial has been on-going is since 2002, i.e. fourteen years. Forty-one persons are appealing their sentences under the PTA with the longest period the person has been awaiting a decision being fourteen years, as of September 2018.

The Commission was notified of individuals who have spent up to thirteen to fifteen years in remand, with one particular prisoner stating he received a three year sentence after serving

⁷³³ ICCPR 1966, art 14.

⁷³⁴ As of 31 January 2018, DOP Statistics Department

⁷³⁵ As of 31 January 2018, DOP Statistics Department

a thirteen year period in remand.⁷³⁶ Many convicted inmates related similar scenarios where the amount of time spent in remand often exceeding period of imprisonment to which they were sentenced.

The Commission was informed of cases where investigating authorities requested the judge to “no-date” the case in order to grant more time to complete the investigation. As one PTA remandee from NMRP stated:

“We don’t know what they [officers] said but later when we spoke to one of the police officers, he told us that the CID asked for more time to investigate and to no-date the case. The judge had questioned why they hadn’t investigated me in the nine months that I was there. The CID had said that it was a big case and they still had pending investigations and requested them to no-date it. The judge agreed to it and no-dated the case. Neither did they ask me anything nor did they provide us with a translator.”

The above-mentioned inmate was not taken to court for another two and a half years.

The impact of no-dating a case is that the next court date for the defendant’s date will not be set, and as a result, the detainee’s trial could be delayed indefinitely.⁷³⁷ Indefinite pretrial detention is a gross violation of the rights against arbitrary deprivation of liberty, as the deprivation has to satisfy the conditions of necessity, proportionality and be fair just and reasonable in law. As such, the detainee would find himself at the risk of grave ill-treatment during custody, due to the lack of judicial oversight and periodic judicial review of the detention period, and would be in a helpless situation without means to communicate with a legal representative and family members while in remand. Such cases highlight the importance of conducting an independent assessment of the need to hold the defendant in pretrial detention.

The impact of a prolonged period in remand is manifold. The foremost effect of indeterminate deprivation of liberty is the adverse physical and psychological impact of the deprivation on the person and the family, the loss of livelihood to the individual and the family, loss of contact with family members who live far away, which also impacts the remandee’s ability to access personal provisions, such as personal hygiene products which are not provided by the DOP, and the accumulation of legal fees and the resultant impact on the livelihood of family members of PTA detainees. The standard of living for many of the families had evidently reduced during the armed conflict due to the loss of personal property and assets and multiple displacements, and many PTA detainees reported the struggles they faced in affording legal representation over the years, particularly in the context in which they were the primary providers for the family.

⁷³⁶ The Commission gathered this information based on the complaints received from PTA detainees prior to this study and was released in the Report of the Human Rights Commission to the Committee Against Torture (Review of The 5th Periodic Report of Sri Lanka) in October 2016. This information was confirmed by qualitative interviews undertaken during this study.

⁷³⁷ For a detailed discussion, please refer chapter Legal and Judicial Proceedings.

7.3. The admissibility of confessions in a trial

Section 16 of the PTA states that the burden to prove inadmissibility of a confession is on the person who asserts it is irrelevant. Therefore, when a defendant alleges he was forced to provide a confession under duress, duress must be proved by the defendant. This is contrary to the national legal framework, where the burden to prove a confession made by the accused was made voluntarily⁷³⁸ is on the prosecution, as affirmed by case law⁷³⁹.

As mentioned above, confessions were obtained during incommunicado administrative detention after subjecting the defendant to severe torture and ill-treatment. The validity of such confessions was questioned by a convicted inmate at NMRP thus:

“They take us to courts with an intention to charge us and even the judge knows our charge is not true. How come all PTA detainees, every one of us had given a confession? How is it possible? There is no logic in it. Everyone knows it is not true.”

Although some police officers would present the detainee to a JMO before and after the confession was given as discussed above, due to multiple factors this didn't lead to JMO reports that documented the ill-treatment, which meant there was often no medical evidence of ill-treatment, which in turn diminished the ability of the defendant to prove duress.

Section 16 of the PTA also requires that confessions must be made before an officer not below the rank of an Assistant Superintendent; this provision is a purported attempt to prevent confessions being obtained by coercion. However, the Commission was informed of a number of instances where officers below the rank of ASP coerced detainees to sign confessions, which indicates there is no mechanism to ensure even the minimal safeguards in place are being followed. Furthermore, the Commission also received allegations against ASPs who reportedly gave false evidence in court, stating that the detainee had given a statement of his own accord and had not been coerced into doing so. As one inmate from ARP stated:

“Only in court did we realize that they had deceived us and obtained a statement. Ideally the ASP is the one who should take the confession statement but he didn't take it. However, he came to the court and said he did. He had a copy that the girl had typed out [with the detainees' signature].”

⁷³⁸ Evidence Ordinance No. 14 of 1895, s 24 ‘A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the court to have been caused by any inducement, threat, or promise having reference to the charge against the accused person, proceeding from a person in authority, or proceeding from another person in the presence of a person in authority and with his sanction, and which inducement, threat or promise is sufficient in the opinion of the court to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.’

⁷³⁹ *The Queen v Rev. H. Gnanaseeha Thero and 21 Others* (1968) S. C. 66/67 (Western Circuit) – M.C. Colombo, 34638/A.

Under such circumstances, where the only witnesses to the confession are police officers, there is a clear imbalance of power and the detainee would not be in a position to prove they were subject to torture during administrative detention and were forced to sign a confession, as there would be no evidence to indicate duress. PTA detainees who underwent torture during the initial period of administrative detention under DO, would typically have their cases reach the High Court after many years and therefore, injuries received during the detention would no longer be detectable. The defendant also becomes particularly vulnerable when they do not have strong legal representation to challenge the admissibility of the confession. Due to the above-mentioned factors there is a high likelihood of a detainee's rights being violated when confessions obtained in police custody are admissible.

7.4. Duress to plead guilty

The Commission was informed that the prolonged remand period reportedly encouraged many PTA remandees to plead guilty in order to conclude the case and receive a more lenient sentence. A PTA remandee at JRP stated that:

"There was an honest female judge..... My lawyer XX explained the case to the judge. Even the judge was humane to tell me that if I were to plead guilty, she would give the minimum sentence considering the fact that I was under remand for such a long time period, the situation of my family and the fact that I was affected by the war."

As detainees stated:

"Most of us pleaded guilty and asked for a minimal sentence to get out sooner, but the problem is they gave us long sentences. The people who came to buy spices from here ruled us for 443 years and we could not question them when they hung people to death as means of punishment. They want us to behave in the same way when they give us sentences. Where are human rights in this?"

PTA Convicted, NMRP

Such cases point to the inherent weaknesses in a criminal justice system where a suspect is compelled to plead guilty as it seems to be the only means of ending indefinite pre-trial detention. As discussed above, PTA inmates highlighted their lack of access to legal representation and legal aid, which demonstrates they would not have adequate legal advice prior to deciding to plead guilty.

7.5. Language of the court proceedings

ICCPR states that the defendant shall have the right to have court proceedings conducted in a language he understands, and if not, shall have the right to interpreters at each step. Principle 14 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment also states that an interpreter shall promptly be provided to a

person who does not adequately understand the language of those arresting him or of the legal proceedings.

PTA prisoners, similar to foreign nationals, overwhelmingly stated they did not comprehend court proceedings, which were conducted primarily in Sinhala, and interpreters were not assigned to them despite repeated requests. An inmate described the extreme measures to which they resorted to have court proceedings in a language they understood as follows:

“The judge speaks in Sinhala; the writer is Sinhala and the government lawyer advocates in Sinhala. Therefore, we don’t understand anything at all. Hence, we staged a hunger strike for seven days to change our court hearing to Vavuniya, but they refused to change our court hearing from Anuradhapura. It was a real disappointment for us.”

PTA Convicted (on appeal), ARP

In instances interpreters were provided by the court it was reported that their competence did not match the standard required to translate legal proceedings as explained by a convicted inmate at NMRP thus:

“In the courts, there was a translator but the translation was not accurate. May be 50% accurate. There was a difference in her Tamil as she spoke Colombo Tamil and we spoke Jaffna Tamil. So it was very difficult to understand her. I guess she might have studied in the Sinhala medium, she could not understand the Tamil that I spoke.”

When defendants are not able to follow the court proceedings, it impedes their enjoyment of their right to adequately prepare a defense⁷⁴⁰, and also prevents them from holding their lawyers accountable. Although the criminal justice system has a serious deficit of Tamil proficient officers, which contravenes the Constitutional guarantee that both Sinhala and Tamil are national languages, the responsibility to provide for services in both languages is that of the State.⁷⁴¹

7.6. The lack of judicial oversight to prevent custodial violations

The Commission has observed a severe imbalance of power in PTA cases, where defendants who, after being held incommunicado detention and subject to violence and ill-treatment, cannot retain a private lawyer due to the sensitive nature of their case nor adequately follow court proceedings. The presumption of innocence is hence not safeguarded and the person is penalized long before a suspect is produced before a judge for the first time. Against this backdrop, a judicial officer is the only independent authority, who can identify and prevent ill-treatment, which is illustrated by the narrative below of a remandee from ARP:

⁷⁴⁰ ICCPR 1966, art 14 (3)(b)

⁷⁴¹ The Constitution of the Democratic Socialist Republic of Sri Lanka, art 25.

"In February 2010 they took us to Vavuniya court. There was a judge named XX. They took us to his chamber to remand us. He asked what happened. So I told him everything that had happened, and how they had taken us and beaten and tortured us. He saw how our hair was cut and our appearance and told us he will look into it. He looked at our medical reports as well. He also asked us if we remembered the names of any of the officers who beat us. I told him there were so many, we didn't remember, but I knew the name of three officers, because they were part of the military intelligence unit. So I told him the three names I knew. He gave an order to arrest the three of them. After that they remanded us in Vavuniya prison."

However, the quantitative data show that only 21% of male respondents stated the Magistrate inquired about ill treatment. This is confirmed by interviewees who stated that when they were produced before a Magistrate for the first time, the judge did not always inquire whether they had suffered ill-treatment in police custody, or refer the detainee to a JMO. Instead, some PTA detainees stated the judge did not even look at them, and instead only consult with the police authorities before remanding them.

Similarly, only 26% of men stated the Magistrate was aware of ill treatment, when they were produced in court. The lack of oversight and hence awareness is described by a detainee below:

"If they take a statement from a detainee they had to take the detainee to the JMO prior to obtaining the statement, and after obtaining the statement this is done to show that the statement was obtained without any torture and without forcing the person. I was taken to the JMO only once- that's on the 31 August 2009, and they had stated that they had obtained my statement on 3 September 2009. The courts did not ask why there is a gap of four days and why wasn't my confession taken immediately after showing me to a JMO. I told my lawyer about this but only after the judgment was given did I find out my lawyer had not said anything in court about this."

PTA Remandee, ARP

8. General observations

PTA prisoners reported that in prison, due to their offence, they reported they have suffered and feel they are at continuing risk of harassment or abuse by fellow prisoners, and even prison officers. Due to this all PTA prisoners stated they prefer to be housed with other PTA prisoners rather than in wards with other prisoners.

Their "special" status, i.e. being categorized as prisoners who require special security, restricts their access to some entitlements such as access to medical care, because due to the severe shortage of personnel and transportation, the additional security requirements mean they wouldn't be transferred promptly to the GH or be taken regularly to their clinics. In addition, across prisons, the majority of the PTA inmates had very little access to any

vocational/skills training, education or prison work due to the nature of their “special” status, limitation of language options available in such programmes or because of the type of prison at which they are housed.

Family contact for PTA prisoners continues to be difficult since most are held in prisons that are long distances from their families, who cannot afford to travel to visit them often.

PTA detainees overwhelmingly reported they were subject to torture during their detention in police custody and alleged they were forced to write confessions under physical duress. Despite the requirements to produce PTA detainees before a JMO before and after a confession has been signed, the detaining authorities would often try to circumvent the safeguards in place through various means and by even colluding with the JMO.

The narratives of the prisoners illustrate that the legal provision, i.e. Section 7 (3) of the PTA, which allows persons to be taken out of judicial custody to be interrogated creates space for the continued violation of their rights as many reported being subjected to torture during such periods of being taken out of prison for interrogation. It also undermines the protections afforded by judicial custody.

Many PTA prisoners mentioned the difficulties, particularly financial difficulties they faced retaining legal counsel, especially due to the nature of the cases, since there is stigma attached to appearing for a PTA accused, as well as the long duration taken to file an indictment and the commencement of the trial. During the trial process too they faced numerous challenges to their full enjoyment of their right to a fair trial, including long delays and the inability to understand the language of court proceedings. All these factors result in PTA detainee being held in pretrial detention for a prolonged period of time, which is contrary to international human rights standards and right to due process safeguards.

9. Recommendations

1. Repeal the PTA and ensure that any new national security/anti-terror law complies with international human rights standards.
2. Legal provisions should not allow a remandee to be removed from fiscal custody for interrogation by police. If it is required in exceptional circumstances, safeguards should be in place to ensure that space is not created for the abuse of the inmate during such periods.
3. No exceptions should be allowed to existing provisions of the Evidence Ordinance regarding confessions, in particular, the burden of proving that a confession was made under duress should not be on the defendant.

4. Make it mandatory for every detainee arrested under national security laws to be produced before a JMO within a specified time and the report of such examination to be submitted to the Magistrate as a matter of course.
5. Review the cases of those indicted and withdraw indictments which are based solely on a confession given to a police officer, and cases where no credible evidence exists.
6. Grant bail to detainees who have been in remand for an extended period of time.

21. Young Offenders

"It's really hard to stay here for such a small offence. I think... I think if they bring more young people here, they won't develop well. They will become worse, not better. Now we... When I was outside, I was afraid of blood, so I was afraid of getting wounded. Now it's not like that anymore. Now even if I see a pool of blood, I won't get scared. Now it's not like that. Now I do not fear anything at all."

YO, Wataraka Training School

1. Introduction

All prisons in the sample of institutions chosen for the study were adult facilities and hence the study did not aim to assess conditions of juvenile detention. However, the Commission found several persons under the age of eighteen held in remand and closed prisons, and occupying a section at one of the work camps visited. Therefore, considering the vulnerability of young persons held in adult prisons, their specific issues could not be ignored. This chapter will hence only focus on problems related to the detention of YOs in a system that was established for adult offenders, and general issues related to the juvenile justice system will not be discussed.

In this section, the treatment of YOs in prisons will be examined within the framework of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice of 1985 (hereinafter referred to as the Beijing Rules), and the United Nations Rules for Protection of Juveniles Deprived of their Liberty of 1990 (hereinafter referred to as PJDL).

The national law that governs detention of YOs is the Children and Young Persons Ordinance (hereinafter referred to as CYPO) Act No. 47 of 1956. The protection of children and young persons (under the age of 16) in places where they are deprived of liberty is governed by this law and the YOTO.⁷⁴² The Penal Code, Code of Criminal Procedure Act and the Prisons Ordinance also contain some provisions applicable to juvenile offenders.

Rule 1.2 of the Beijing Rules highlights the purpose of juvenile detention and rehabilitation facilities, which requires states to 'develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible'.

Similarly, the Sri Lankan Charter on the Rights of the Child, formulated by the government of Sri Lanka in 1992 following ratification of CRC, requires that juvenile offenders are 'treated in a manner consistent with the promotion of the child's sense of dignity and worth,

⁷⁴² The Youthful Offenders (Training Schools) Ordinance No.28 of 1939 (YOTO)

which reinforces the child's respect for the human rights, the child's age and the desirability of promoting the child's reintegration and assuming a constructive role in society'.

1.1. Definition of 'Young Offender'

The Commission views all persons under the age of eighteen as children as per the CRC⁷⁴³, which also states that children deprived of their liberty should be separated from adult offenders⁷⁴⁴. In this chapter, the reference to YO is to persons below eighteen years that the Commission came across during this study.

According to the commentary on the Beijing Rules Section 2.2, the definition of a 'juvenile offender' can include a person aged seven to eighteen years or above, thus ensuring age limits are explicitly dependent on each respective legal system, fully respecting the economic, social, political, cultural and legal systems of member state. However, this discretion afforded to member states is not in line with international standards outlined in the CRC, according to which the rights of persons under the age of eighteen are to be considered separately to those above the age of eighteen.

The national legislation governing imprisonment and the segregation of juvenile offenders contains contradictory and inconsistent provisions regarding the age limit of persons that fall within its purview. The different age limits specified in different national legislations are as follows:

- The Charter on the Rights of the Child defines a person under the age of eighteen as a child.
- The interpretation clause of Section 88 of the CYPO categorizes a person who has attained the age of fourteen years and is under the age of sixteen years⁷⁴⁵ as a 'young person', which means those between the age of sixteen and eighteen are not within the purview of this law.
- The YOTO categorizes persons between the age of sixteen and twenty-two as 'youthful offenders'.
- The age limit for a young person who can be held in prison is not explicitly specified in the PO, but it mentions that juvenile offenders should be separated from adults.⁷⁴⁶
- The SRs state that segregation is necessary for offenders under the age of twenty-two.⁷⁴⁷
- According to the DSO a youthful offender is a person between the ages of sixteen and twenty-one years⁷⁴⁸, which is in line with the YOTO's definition of a 'youthful person': a person who has attained the age of sixteen years but has not attained the age of twenty-two years⁷⁴⁹.

⁷⁴³ Convention on the Rights of the Child 1989, art 1

⁷⁴⁴ ibid art 37(c).

⁷⁴⁵ Children and Young Persons Ordinance Act No.47 of 1956, s 88

⁷⁴⁶ PO No.16 of 1877, s 48(b)

⁷⁴⁷ SRs 1956, s 178(d)

⁷⁴⁸ DSO 1956, s 1011 (q)(ii)

⁷⁴⁹ Youthful Offenders (Training Schools) Ordinance, No. 28 of 1939, s 16.

Thus, the national legal framework permits persons under the age of eighteen to be housed in the same wards with persons above the age of eighteen and under twenty-two, which translates to juvenile offenders who are under eighteen, being held with offenders aged up to twenty-two years, who qualify as adults. This is in contravention of international standards as well as national standards, indicating an inconsistency in the law. The specific vulnerabilities of incarcerated children and their rights may therefore not receive adequate emphasis in such a context.

Section 15(1) of the CYPO also states that a young person who is not released on bail cannot be kept in prison but instead should be housed in a remand home.⁷⁵⁰ However, Section 15(2) of the CYPO stipulates that if a person is unruly in character and cannot be safely detained in the custody as stated in Section 15(1), it is a requirement to keep the YO in prison in accordance with a ruling by the Magistrate's Court.⁷⁵¹ Therefore, by reading the SRs, which state that those under twenty-two are young persons who must be segregated from adults, in conjunction with the aforementioned provisions of the CYPO, it is evident that national law allows persons under the age of eighteen years, and over fourteen years, to be detained in adult prisons.

The Commission observed that the government at the time proposed to amend the CYPO and the YOTO, so as to change the definition of children to persons under the age of eighteen in line with international standards, as per the decision of the Cabinet of Ministers on 30 April 2019.

1.2. Young Offenders within the criminal justice system

Section 17.1(b) of the Beijing Rules states that the incarceration of juveniles should be restricted, and only be carried out after careful consideration⁷⁵². The Rules further state that juveniles should segregated from adult prisoners and held in separate institutions, or at least in a separate part of the institution where adult prisoners are held.⁷⁵³.

The CYPO has clearly listed in Section 23 (2) that a young person shall not be ordered to be imprisoned for any offence, or be committed to prison in default of payment of a fine, unless the court certifies that he is of so unruly a character that he cannot be detained in a remand home or certified school, or that he is of so depraved a character that he is not a fit person to be so detained.⁷⁵⁴ It also mentions that the words 'conviction' and 'sentence' shall cease to be used in relation to children and young person's dealt with summarily, and any reference in any written law to a person convicted, a conviction or a sentence shall, in the case of a

⁷⁵⁰ Children and Young Persons Ordinance, Act No. 47 of 1956, s 15 (1)

⁷⁵¹ ibid s 15(2)

⁷⁵² Beijing Rules 1985, r 17 (1) (b)

⁷⁵³ ibid r 26(3)

⁷⁵⁴ CYPO 1956s 23(2)

child or young person, be construed as including a reference to a person found guilty of an offence, a finding of guilt or an order made upon such a finding.⁷⁵⁵

In addition to the provision in the CYPO which allows YOs to be imprisoned⁷⁵⁶, Section 316 of the DSO states a YO can be remanded at either WCP, Bogambara (now PCP) and JRP for fourteen to twenty days until the CGP finds a suitable training school after the judge's order.

The YOTO stipulates the legal framework for the functioning of training schools to which persons between the ages of sixteen and twenty-two can be sent as an alternative to being convicted and sent to prison. A training school, or, as it was formerly known, a borstal, functions as a correctional institution for young male offenders, where they are made to undergo educational and development training in an attempt to transform the anti-social behaviour and criminal tendencies that they display. The time spent in the training school is not considered to be a sentence of imprisonment as per Section 23 (2) of the CYPO, and hence does not appear on a YO's permanent record. One such training school is situated within a work-camp visited by the Commission, i.e. the Training School for Youth Offenders in Wataraka at the Homagama Work Camp (HWC), which falls within the purview of the DOP, and holds YOs aged between sixteen and twenty-two.

YOs i.e. persons between the ages of sixteen and eighteen when convicted are sent only to a youth correctional centre to serve their sentence. Persons aged between eighteen and twenty-two however, who are considered to be juvenile offenders under national law, can also be sentenced to serve three years in the Wataraka Training School instead of being sent to prison. As a result, YOs are being held with adult offenders in the Wataraka Training School. Furthermore, a convicted YO, may be sent to an adult prison for transit where they might come into contact with adult prisoners, before they are transferred to a youth facility. For instance, the Commission came across one such convicted YO at NRP, where he was awaiting transfer to Pallansena. YO remandees, on the other hand, are commonly found at remand prisons where adults are also held.

International legal standards on the detention of juveniles consistently highlight that the detention and imprisonment of YOs should be a last resort, after other dispositions are exhausted.⁷⁵⁷ This is primarily because the impact of the deprivation of liberty, loss of self-determination and separation from loved ones and normalcy has a severe effect on young persons, compared to adults, as they are undergoing the crucial stage of formative growth and development.⁷⁵⁸ The Commission did not observe any convicted males below the age of

⁷⁵⁵ ibid s 33

⁷⁵⁶ ibid s 23 (2)

⁷⁵⁷ United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990, r 2; Beijing Rules 1985, r 19.

⁷⁵⁸ Beijing Rules 1985, Commentary r 19; 'Little or no difference has been found in terms of the success of institutionalization as compared to non-institutionalization. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences. Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development.'

eighteen serving their sentence in any prisons, except for the few convicted YOs that the Commission came across who were held in prison in transit, before being transferred to a youthful offenders' institution. Convicted males below the age of eighteen are either sent to youthful offenders' institutions or to other places of detention.

2. Wataraka Training School for Youthful Offenders

2.1. Work camp structure

The Wataraka Youth Training School, which is within the purview of the DOP, is the only correctional facility of its kind and is situated within the premises of HWC. Although, the Wataraka Youth Training School is considered to be a separate institution, in practice, both institutions are overseen by one SP and administered by the same prison staff. Although the accommodation for YOs and adult prisoners is in two separate sections, the YOs and adults share a number of services provided by the prison. For instance, the food prepared by the kitchen party of HWC is also served to the YOs at Wataraka and the YOs are taken to the PH that is situated in the adults' section of the HWC. It is therefore akin to a female section in other prisons. The DOP also includes the population of YOs with the population of adult prisoners at HWC in the morning unlock count. As the conditions of their detention are similar in many ways under a single administration, the Wataraka Training School and HWC are evaluated as one institution for the purposes of this study.

When the Commission visited the Wataraka Training School in April 2018, it identified that the male youth sent to this school were between sixteen to twenty-two years of age. This categorization of age is problematic as persons below the age of eighteen, who are considered to be children as per the CRC, are housed with offenders above the age of eighteen, who qualify as adults.

The Commission was informed by the school administration and the SP of HWC that YOs were sent to Wataraka based on the sentence they receive at the Magistrate Court. The Commission was informed that when a YO is sent to Wataraka Training School, they need to have a completed Form of Warrant of Commitment to a Training School (Prison 113) issued by the court. This requirement is reiterated by Circular No. 33/90 issued by the DOP.⁷⁵⁹ Along with Prison 113, a social report, which contains an explanation of the child's background, a mental health assessment and all other personal information should be submitted. However, in practice, when the Commission inquired about these reports, a prison guard at HWC stated that when a new entrant is sent to Wataraka a social report is not always sent with the Warrant of Commitment.

The youth at the Wataraka Training School were both Sinhalese and Tamil and appeared to be from impoverished socio-economic backgrounds. According to them, they were given an orientation when they entered Wataraka, during which the Welfare Officers explained the rules of the institution - giving them a briefing identical to that which the adult prisoners receive at HWC.

⁷⁵⁹ Department of Prisons, Circular No 33/90

2.2. Reasons for detention

The Beijing Rules require court proceedings of juvenile detainees to be ‘conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely’.

Article 39 (3) of the Sri Lankan Charter on the Rights of the Child states that ‘every child alleged or accused of having violated the law shall be guaranteed the right to be informed promptly and directly of the charges against him and, if appropriate, through his parents or guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence’. Section 9(1) of the CYPO states that the court should explain the judgment or verdict to the child or young person in simple language.⁷⁶⁰

A YO who is sentenced for three years is sent to the Wataraka Training School. This is set out in the YOTO, which states that any male who is convicted of any offence, as listed in the First schedule of the Code of Criminal Procedure Act No. 15 of 1970, and is a youthful person found in bad character should be subjected to detention to discipline him at an available training school for three years.⁷⁶¹ It should be noted that elements that would have to be present to constitute the assessment of ‘bad character’ are not set out in the YOTO, and there are no objective standards to assess whether a person is of ‘bad character’.

Many young persons held at the Wataraka Training School were primarily detained for committing theft and robbery, as well as drug offences, some of which were related to the consumption of drugs, while others related to assisting adults in the sale of drugs. However, when interviewing YOs at Wataraka, the Commission found that some of them were not aware of the reasons for their detention, or exactly what had transpired during court proceedings. A commonly found pattern was many YOs stating their parents had voluntarily brought them to the police to be disciplined for engaging in anti-social behaviour, indicating the difficult familial contexts they inhabited and frayed and fractious relationships with parental and authority figures. As one YO from Wataraka stated:

Q: “Why were you arrested?

A: Because I do not obey my parents

Q: So, what did you do?

A: I broke things in my house.

Q: What did you break?

A: TV, table, chair, cassette

⁷⁶⁰ CYPO 1956, s 9(1)

⁷⁶¹ YOTO 1939, s 5(1)

Q: Why did you do such a thing?

A: Because I got very angry."

One respondent said that his family asked the court to put him in prison to rehabilitate him as he was dependent on a medicinal drug named Pregabalin, and was fighting with his parents as a result. He stated that he initially felt like killing himself because he was sentenced to three years because of his family, although he later realized being in detention would prevent him from engaging in worse behaviour.

Another YO respondent stated that he had committed theft because he was courting a young girl who threatened to leave him because he didn't have the finances to buy her a gold necklace. Another said that his mother used him to assist her in running a drug distribution business because she had no other means of livelihood. Reportedly, when the police raided his house, his mother threw out a packet of drugs, and the sixteen-year-old young boy in fear that they would lose their income scrambled outside to collect the packet, for which he was charged.

The narratives put forth by the YOs of the Wataraka Training School indicate that many are at the correctional centre for behavioural issues that require psychological treatment and familial support, or for crimes committed due to impoverished circumstances or parental pressure.

3. Detention conditions at the Wataraka Training School

3.1. Wards

At the time of the Commission's visit in April 2018, there was a total of thirty-five YOs resident in Wataraka, who attended school at Suneetha Pasala.

The youth were kept in two different wards in the work camp, which were segregated from the adults, one of which consisted of twenty five of the most recent entrant YOs between the ages of sixteen and twenty-two years, and the other housed ten YOs who have been in the camp for longer than a year. The wards were separated into cells and each cell had three to four young persons inside. Each cell had one light and a small window, which was barred, and the toilets were outside the cells at the end of the hallway.⁷⁶² Complaints were received about the lack of space in the lower floor, as three to four young people inhabited a single cell so there was not enough space for them to move around. YOs also reported they are made to stay inside the ward for the entire day on Saturdays and Sundays, or may be taken out for an hour, at most, for play time:

⁷⁶² For a detailed discussion on the accommodation facilities of YOs at Wataraka Training School, please refer chapter Accommodation.

"We are inside on Saturdays and Sundays. We are locked inside. Some days they take us out to play. They let us play for about one hour. Then they put us inside again. Then we cannot even stretch our hands and legs. There are twenty-five to twenty-six of us downstairs. We can't even walk inside without bumping into each other. There are four people in one cell. We sleep with a lot of difficulty. It's useless saying this, you have to come and see it. There's no such issue upstairs. It's a big hall. There are no cells. There are only about nine upstairs. There are extra people downstairs, but they don't send us up. There's space to send people upstairs. There's freedom there. I mean, why not reduce the amount of people in one cell and send them upstairs? We're fed up. There are four stuck in a cell. We don't have enough space to sleep."

YO, Wataraka Training School

If a YO needed to use a toilet once the cell was locked at night, officers stated they would have to inform the officer stationed outside the ward who would open the cell to allow the youth to relieve himself. The youth however claimed they were unable to use the toilet at night as their request is not heeded. They stated that instead, they are made to relieve themselves in plastic buckets inside the cell at night time, which are kept in the cell all night until the young persons clean them in the morning:

"There is a small bucket inside. There are three or four people inside a room. All four of us cannot use the small bucket as a toilet. So, it is hard for us to stay inside the cell."

YO, Wataraka Training School

The Commission also observed that there were ten mattresses in the wards for them to sleep on, but this was inadequate as twenty-five boys had to share the ten mattresses. In the corridor outside the ward, there was a TV. The YOs received water supply in their wards for bathing and drinking purposes. The Commission was informed by prison officers that the youth were allowed to watch television after they returned from school at 1430h. For lunch⁷⁶³ they are served the same food as the adult prisoners and are allowed to play till 1800h. However, the YOs contended they were allowed to watch TV until the cells were closed at 1800h and were not given play time every day, but every other day. This contradicts SMR 23 (2) which states that young prisoners should be given a period of exercise with the necessary facilities.⁷⁶⁴ As they are required to do homework after school, the YOs utilize time in the ward to finish their homework. However, since there were no desks or chairs inside their ward they would sit on the floor or on a mattress to complete their school-work. According to a respondent, there used to be desks in their ward, but these were taken out eight months ago by the prison administration for reasons that were not made clear to the Commission.

⁷⁶³ For a detailed discussion on the quality of food in prison, please refer chapter Food.

⁷⁶⁴ SMR 2015, r 23(2)

3.2. Access to medical treatment

The Commission observed YOs would receive medical treatment from the same PH where adult offenders receive treatment, which is situated in the adult prisoner section of the work camp. The YOs do not have a separate medical facility and reported that all YOs complaining of an illness would be taken to the PH together once a day, usually at 1100h. If they feel unwell at night, they would have to wait till 1100h the following morning. They would only be taken to the PH immediately in an emergency, such as the case of a young boy who stated he was taken immediately to the PH when he woke up regurgitating black liquid. Like in other PHs, doctors would operate in shifts during week days and remain on call at night, while dispensers or nurses would be available at night time. A YO also stated they are prescribed Panadol for most ailments:

“They give us Panadol even if we have a headache or a leg pain or any other pain. They won't give us anything apart from that unless we get a prescription from the doctor. Even the doctor gives Panadol for a leg pain.”

The Commission observed that YOs are brought to the PH in handcuffs in an attempt to make it easier for officers to restrict and control their movement. One young offender also reported his hands and legs were chained to the bed when he was taken to the general hospital after complaining of chest pains.

3.3. The lack of mental health care

“We sometimes feel like killing ourselves. During our first days we felt like escaping or killing ourselves.”

YO, Wataraka Training School

Rule 53 of the PJDL states that juveniles suffering from mental illness should be treated in specialized institutions and ‘steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release’. Rule 5 of the Beijing Rules states that ‘the juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.’

Since it was observed that the majority of the YOs were very hesitant to talk and engage in individual conversation with members of the Commission, they were divided into focus groups, which allowed them to relax and collectively discuss the issues they faced. The youth stated that they felt extremely depressed at the camp. As one young person stated, “I feel sad thinking that I am stuck here and have left my family far behind. At home I used to live in harmony with my mother and my siblings”. Many YOs stated that once they are in the wards in the afternoon, they tend to think about their family and the life they led outside prison, which leads to feelings of sadness. In particular, YOs who do not receive family visits suffer from this.

A respondent explained that the guards would torment them and even insult their family members to the YO's face, which in turn saddened the youth. When engaging in these discussions and some individual interviews, it was noted by the Commission that the YOs had marks of physical ill-treatment on their arms. Some had blade marks and others had black lines that seemed like a wire would have been wrapped around their arms. The young persons stated, as they do not have anyone to speak with or listen to their problems, to relieve themselves of their emotional pain they used razors to cut their arms. Instead of receiving counselling or support services, young offenders alleged they were punished by prison officers for engaging in self-harm, by inflicting assault and charging them for misdemeanours, as a result of which they would be sent to the Pallansena Youth Correctional Centre. As one YO explained it:

Q: "If students cut themselves, do the prison officers ask what happened?

A: They will charge us. They don't ask any questions. They will charge for cutting ourselves.

Q: What type of charge?

A: They will send us to Pallansena.

Q: For cutting?

A: Yes, imagine, if we have already been here for two years and then they send us to Pallansena, adding another few months to the original sentence."

3.4. Family visits

One grievance mentioned to the Commission by both the youth and the teachers of Suneetha Pasala was the inability of the YOs to communicate with their families. The youth mentioned that they were allowed only one visit a month and most YOs would be visited by one or both parents. However, these visits would not be frequent due to reasons ranging from inadequate financial resources or because their hometown was far away from Wataraka. Even when they receive family visits, young persons stated they could not complain to their families about the problems and the violence they face at Wataraka, as an officer is present when family visits take place.

A number of young persons also stated that although they write multiple letters to their families, officers read the letter but do not send them. One YO reported he had handed over five letters to prison officers to be sent to his mother, but when she came to visit him, she said she had not received any of them.⁷⁶⁵

⁷⁶⁵ For a detailed discussion on prisoners' contact with family, please refer chapter Contact with the Outside World.

A few YOs stated they do not receive visits because they believe their families were not informed of their arrests. The Commission was approached by three YOs, who stated their family members were not aware of their detention at the Wataraka Training School and requested the Commission to inform their loved ones. The Commission found that some families were in fact aware of the detention at Wataraka but did not wish to visit the YOs.

3.5. Access to basic provisions

When families visited, YOs informed the Commission that they were not allowed to give them food, and could give only articles of clothing or basic sanitary items. According to the YOs, the food they receive in Wataraka often contains stones, insects and hair. Since the food provided at the work camp is unpalatable, they wish to receive home cooked food but are not allowed to accept the food brought for them by their families, and food items brought by families during visits are sent back. Even on special days and festivals, many YOs reported they were allowed to receive only a small quantity of food brought to them and for instance, food brought for others in the ward by the family of one YO would not be allowed.

The Principal of Suneetha Pasala informed the Commission that when YOs don't receive visits from their families and the administration at HWC also does not provide such articles, the teachers, at their own expense, buy underwear, toothbrushes, razors and books for the YOs. Sometimes, teachers would also give the youth food. The Commission was informed by the SP of HWC of an instance when he had sourced school shoes for the YOs through donations from charities and personal contacts, as there is no budget allocation to provide such items to the YOs.

It was brought to the Commission's notice that the boys did not have any cups or water bottles to use to drink water during school hours, and were using plastic buckets for this purpose.

4. Treatment of Young Offenders in the Wataraka Training School

4.1. Officers and the use of violence

It was observed by the Commission that the youth were very reluctant to discuss or talk about their treatment and experiences at the Wataraka Training School, especially about the actions of officers. It took the YOs considerable time to become comfortable to discuss issues they face with the guards since they feared reprisals.

An issue of grave concern is the widespread use of violence to deal with disciplinary or behavioural issues. Rule 67 of the PJDL states, 'all disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned.' The same provision also prohibits collective sanctions. Many boys narrated incidents which illustrated the

extensive use of physical violence as a means of control and punishment, in order to create an environment where YOs would be fearful of acting out.⁷⁶⁶

Young persons alleged they are beaten using batons, clubs, bamboo sticks and chains as disciplinary sanctions, for reasons ranging from asking the cell to be opened at night to access the toilet or not standing in line during the morning polling or even attempting to report a complaint or grievance. It was also reported that all persons in the ward would receive beatings for a misdemeanour committed by one individual, and multiple officers would beat them at the same time. In one incident reported to the Commission, allegedly, fifteen boys were made to line up and receive beatings after which they were all made to sleep in a single cell the entire night. Physical violence is reportedly always accompanied by verbal abuse and insults directed at the young persons' families and their mothers in particular. One YO also reported he was held in a cell by himself as punishment for two days and was not provided with a mattress or pillow:

"They only give us the clothes we are wearing without any bed sheet, pillows or mattresses and lock us in the cold. I was in there for about two days. They open the door and give us food during meal times. We are allowed to keep a water bottle. We wash our hands with that and keep it inside with us. They give us a bucket to pass urine. We have to keep that bucket inside the cell. So, we sleep and pass urine and do everything in the same place. Officers come and ask whether we need to go to the toilet. If we don't have to go at the time, we won't get to go out and we won't be taken out when we do need to go."

All young people interviewed stated they were assaulted on their first day in the institution. As one interviewee stated:

"They put me inside the cell after hitting me once I came here. I asked what I did wrong and they said, "we don't need to do anything wrong to receive beatings". I was hit using hands and I was asked to kneel. We form the queues at 0530h and he asked me to kneel down until the queue is formed. I asked them what I did wrong. They said we didn't have to do anything wrong for them to punish us."

A youth mentioned that the officers would enforce physical ill-treatment to discipline them if the officers thought their behaviour was not acceptable. For instance, a YO had marks on his arms which he mentioned were the result of an assault by an officer who had taken a wire from the ward and wrapped it around his arms to punish the YO. This allegation was confirmed by another YO who said:

"These marks on him are from being beaten with wires. Even we were beaten. They hit everyone in the ward after beating him. They beat him more. There's a corridor outside the ward. He was taken to that corridor by four or five officers. They closed the door and then beat him up. Once they were done

⁷⁶⁶ For a detailed discussion, please refer chapter The Continuum of Violence.

beating him, he was sent in and then they hit us. There were about sixteen people in the ward, two downstairs at that time. We were asked to come in a queue and they hit us one by one. Then they locked fifteen people together in one cell."

A main concern of the prison as stated by the SP and the prison administration was the ability of prisoners and the YOs to escape from Wataraka because the detention facilities do not have a fence or concrete structure that would prevent prisoners from leaving. Therefore, the chance of escape is high. Reportedly, some youth tried to escape a few months prior to the Commission's visit but were unsuccessful. When this attempt was brought to the officers' notice, the officers reportedly walked in and handcuffed the boys while the YOs were attending activities at the school, after which they hit the boys in front of everyone and then again in their ward. On the same day, while the officers were serving the youth their lunch, they allegedly served the rice on the floor of the ward and trampled it after which the boys were instructed to sweep the contents from the floor and consume it. When this incident was raised in a meeting with the SP, he denied it.

It must be highlighted that these young boys are from families experiencing difficulties, including severe financial difficulties, and may have suffered abuse in the past, and are presently dealing with being separated from familial support as well as deprivation of liberty. Such conditions would have a severe impact on their emotional well-being, which is the reason international standards recommend that the imprisonment of juveniles should be carried out as last resort. The hardships they face due to the conditions and deprivation of liberty are aggravated by the use of torture to discipline and restrict their actions, when behavioural issues and acting out would be expected from YOs under these circumstances. The repression of these YOs with the threat and use of violence has reportedly caused many of them to resort to self-harm, which is discussed below.

4.2. Relationship with teachers

Each of the YOs stated that the Suneetha Pasala was a safe sanctuary for them and it was observed that the youth would openly discuss their problems with the teachers. A respondent mentioned that he lamented to a teacher regarding missing home cooked food and that the teacher went to the SP to complain on his behalf. This resulted in immediate action where the youth was able to get food from home. Another YO expressed that, "School is good, it is because of the school we don't feel alone."

School was seen as a means of having a normal life as they were able to interact with the other YOs and be in an environment which was not deprivative. Some teachers would go to the extent of buying the youth food for their birthdays, which created a sense of belonging among the boys and created positive and supportive relationships with adults of which they are deprived in detention. Since the stated purpose of sending young persons to training schools is to rehabilitate those who have been engaged in crime or anti-social behaviour, a mentoring relationship with adults is imperative in such an environment. Most YOs made positive comments about their school, with some even stating that the teachers were like their friends and they wished to see the school develop and progress. The YOs stated that the

teachers do scold them but stated they do not resort to any physical ill-treatment. As one YO stated:

"We talk with them [the teachers]. In truth, they are like our friends. There are some teachers who are like friends to us. If we have a problem, we go and tell it to our sirs. Even if we face a big problem, that means if something happens to us or if someone hits us... when they ask us about it, we can tell them because we trust the teachers. We don't have any problems with our school. We want to see our school develop more. In the current situation, they do not get any support from the prison. Not even to conduct a sports meet."

As another YO describing the difference between the school and the detention centre stated:

Q: "What would you like to change about this facility?

A: If we could stay in some kind of hostel or something. Not a place like this. In school, we are in a different mental state and here, after coming from school, it's another mental state. In school, we are outside, free. After going back to jail from school when the cell is locked at night, it really affects us. I always think of my family."

There is a noticeably fractious relationship between the teachers of Suneetha Pasala and the staff of the HWC. The Principal of the school lamented that there was inadequate support from the prison administration to provide the youth with adequate supplies, such as books for school. The school informed the Commission that the prison administration does not allow students to play outside during their break time, nor is the school allowed to conduct events such as sports meets or marching parades. The Principal of the school stated, "I am very depressed, and I am planning to apply for a transfer next year since I have completed five years in this school. All we need is our independence because the SP always tries to control and get things done his way". This creates an uneasy environment in the school as the staff of Suneetha Pasala felt constrained from assisting the YOs in realizing their potential. The lack of support from the prison authorities created a strained relationship, which prevents the teachers from helping the youth.

During the Commission's post-visit meeting with the SP, he stated that the SP should have more oversight of the administration of the school and the teachers. He further stated that the pressure on young persons to adapt to the curriculum irrespective of their previous education background and abilities had an adverse psychological impact on the youth. Since the teachers teach the curriculum as per the instructions of the Ministry of Education, they do not have the authority or the power to change the syllabus to cater to the needs of every student.

4.3. Internal grievance mechanism

Complaints about the institution's internal grievance mechanism were two-fold. One was about the lack of concern to inquire into their grievances and the lack of action taken to resolve the grievance. The other complaint was the fear of reprisals, which prevented many young persons from making complaints.

Most YOs stated they preferred to speak to the SP about their problems as they felt he would solve the issue. When the Commission inquired about the actions the SP took, a YO mentioned that the SP would scold the officers for not taking care of the inmates but this put the youth in danger as it resulted in reprisals. However, another YO stated that the SP at the time did not visit or interact with the boys of Wataraka. He said, "The Chief Jailor sir comes to check our problems. SP sir never comes", and stated the SP had not visited the youth in one and a half years. Some young persons also stated that when they ask the prison guards to take them to see the SP, they are not taken. There was also an instance in which a YO stated that when he complained to the CJ it led to reprisals. He said:

"The sirs (officers) ask us to make complaints if there are problems like that. They said if we have problems, we can inform the CJ. If we say that to CJ, then they will inform to their heads. Then very next day these sirs (officers) will come to meet us. Recently one sir (officer) came and said, 'We know early morning you came and complained about this, the CJ informed us about you. Then he scolded us and our parents and after that took us to school."

Another young person reported:

"No one complains about the anything. Even if we are hit or killed, there is no one to look into it. We can only complain when people like you come. Otherwise we can't tell anyone, even if we are beaten up, injured or break an arm. We can't even tell our families. We don't have the freedom to do that. If we tell the Chief Jailor, he takes the side of the officers. Since we are prisoners, they take the officer's side. The Chief Jailor came to speak to us that day, before we went to school. He asked the prison guards to break our bones and bring us back if we get involved with any issue at school."

YO, Wataraka Training School

The fear of officers and repercussions they would face if they complained about the administration was a problem noted amongst all YOs held at Wataraka. They even pleaded with the members of the Commission not to tell the prison staff about what they shared as they believed their benefits would be stripped away, or they would be punished by other methods. One youngster related the story of his ward mate who had received beatings for complaining about the prison officers to the judge during his court trial.

Young persons also informed the Commission that every time they are visited by an external institution, such as HRC or the National Child Protection Authority, the prison officers inquire from them what they disclosed to the visiting authorities. The Escort Branch based

at the CRP informed the Commission that if a child complains about violence and ill treatment at a detention centre, they would inform the court – which they have done in certain instances and the court would relocate the YO to another location. There was no mention of action taken against the officers accused of ill-treatment.

5. Rehabilitation and educational opportunities

Rule 38 PJDL sets out the right of juvenile detainees to be able to complete their education during their detention period and be provided with vocational training, which will equip them to find suitable employment in the future. The rules further stipulate that juveniles should be allowed to undertake remunerated work, wherever possible, during their detention.

Rule 54 of PJDL requires YOs to be provided specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel, particularly for drug- or alcohol-dependent juveniles.

Article 39 of the Sri Lankan Charter on the Rights of the Child states the state must ‘ensure that care, guidance, counselling, education and vocational training are available to a child accused of or convicted for having violated the law and also ensure that such child is dealt with in a manner considering the well-being of such child’.

This section discussed the educational and vocational opportunities available for YOs at the Wataraka Training School as part of their rehabilitation. It must be pointed out at the onset that the primary focus on rehabilitation of YOs is through the Suneetha Pasala, which is mandatory for all YOs to attend. Whereas, convicted persons above the ages of eighteen held in prisons and YOs transferred to the Pallansena Youth Correctional Centre do not have access to school but are instead required to undertake prison work.⁷⁶⁷

5.1. Suneetha Pasala at Wataraka

SMR 104 states that the education of young prisoners should be made compulsory and the prison administration should pay special attention to this. It further states the education of prisoners shall be integrated with the educational system of the country.

This Training School is unique because there is a school for the YOs within the premises, named Suneetha Pasala. It was established in 2014 to provide education for YOs held at Wataraka. This school is administered by the Ministry of Education and does not come under the purview of the DOP; therefore, it functions as a standard public school with the national curriculum. The education provided at Suneetha Pasala is standard secondary education. The Principal of the school explained that classes for the youth are available from grade nine to eleven, preparing the YOs to sit for the Ordinary Level and Advanced Level Examinations.

⁷⁶⁷ For a detailed discussion, please refer chapter Prison Work.

A typical day for YOs consists of being allowed out from their wards for the morning count at 0600h, after which they have their breakfast and then attend school at 0800h. The Principal of Suneetha Pasala mentioned the school had seven teachers in total, four full-time, one part-time and two volunteer teachers. The teachers were recruited by the Ministry of Education, with one teacher volunteering twice a week to teach the subject of history. The Commission was able to observe classrooms, which had benches and stools. There were many windows with adequate sunlight and two LED lights and a fan. The blackboard was placed on a wall behind a cement platform on which there was a bench.

The school provides classes for the Ordinary and Advanced Level examinations, in line with the national curriculum. However, the problem is that students who were required to study the curriculum of grade nine to eleven may not have attended school previously, due to their impoverished familial conditions, and some young persons were reportedly unable to even spell their own name. Therefore, a YO with inadequate literacy or basic education is expected to start from grade nine, which causes severe difficulties for both the students and teachers as they have to teach the same curriculum to all students irrespective of individual levels of literacy. All classes were conducted in Sinhala even though there were five Tamil speaking students who had no choice but to study in Sinhala.

The advantage of serving a sentence in a training school is that YOs are allowed to attend a national school and continue their education at the Wataraka Training School, whereas at the Pallansena Youth Correctional Centre where convicted YOs are held, they would be required to be engaged in prison labour. Since the only practical advantage to being sentenced to detention in a training school is the access to education, it must be ensured that the provision of education meets the requisite national and international standards as well as the needs of the target group.

5.2. Vocational training

Rule 26.6 of the Beijing Rules requires inter-ministerial and inter-departmental co-operation for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, ‘with a view to ensuring that they do not leave the institution at an educational disadvantage’.

Many youths claimed that their families willingly sent them to the Wataraka Training School as they believed they would be rehabilitated. A respondent said that he was dependent on abusive substances, so his family took him to the police in anticipation of him being rehabilitated at Wataraka. However, the youth claims that he has not been provided any rehabilitation whatsoever as they only go to school and reside in the ward and are not provided any rehabilitation. The Commission also observed that despite claims of being dependent on drugs, YOs were not provided with any substance abuse treatment or required to undergo any remedial programmes. The Principal of Suneetha Pasala stated that they encourage students to be involved in sports as well as religious programmes, such as Poya day programmes, which constituted the rehabilitative opportunities provided for those with substance abuse problems.

YO respondents informed the Commission that sewing and needlecraft programmes were available, as well as vocational training in a plumbing course for students when they are not engaged in preparing for Ordinary Level and Advanced level exams. The Commission was also informed of a conflict between the school and the prison administration in this regard; in order to attend training in IT provided by the school, YOs would be required to skip the vocational training in needlecraft provided by the prison, indicating a lack of co-ordination between both administrations.

Many YOs also expressed concern and uncertainty about their future once they are released. This was also noted by the SP at the follow up meeting with the Commission. He stated that the YOs should be given more vocational training opportunities to enable them to acquire jobs once they left Wataraka. This was highlighted as necessary, particularly because many YOs are reportedly unable to follow the Grade nine school curriculum, and would therefore benefit more from vocational training programmes.

5.3. Counselling services at the Wataraka Training School

“These three years here feel like thirty years. It feels like a murder conviction.”

YO, Wataraka Training School

Commentary on the objectives of institutionalization as per the Beijing Rules states that medical and psychological assistance must be readily accessible, particularly for institutionalized drug dependent, violent and mentally ill young persons.

There is one counselling officer at Wataraka who was appointed by the NDDCB to counsel drug dependent persons two months prior to the Commission’s visit. She stated that she mostly provides counselling services to YOs rather than convicted adults, and they are able to readily access her after school hours and before their wards are locked. She mentioned that each session takes around forty minutes but she is not provided with adequate space to conduct counselling sessions, and as she sits in the Welfare Division along with Welfare officers, she usually speaks to the YOs outside the office, when they require her services. Since starting her work at the Wataraka Training School in March 2018, the counsellor had conducted twenty-eight counselling sessions as of November 2018. The counselling officer expressed there were no personnel available to prescribe medication for inmates who have mental illnesses and that there was a need for inmates to be referred to a psychiatrist, illustrating the lack of adequate staff who are trained to deal with young persons with behavioural issues.

Most of the YOs interviewed did not mention they had access to counselling services in prison and mentioned to the Commission they were largely unaware that such services were available, as they had not been informed of the counselling officer. One YO stated:

"When we are stuck within these four walls, no one will come for us even if we scream. Even if we get murdered at night, no one will come for us... We sometimes feel like killing ourselves. During the first few days we think about that a lot. Either escaping or killing ourselves."

YO, Wataraka Training School

Another YO, who was aware of the services of the counsellor alleged:

"We usually don't talk to her. Even if we do, SP will get to know. Then they will punish us. There is no one to talk to about our problems. There is not even a good friend to talk about your grief here. There are friends, but they would only talk when they need help. If not, they are not there. Always alone."

Convicted YO, Wataraka Training School

(This YO stated he tried to commit suicide after being sent to Wataraka)

Due to the stigma surrounding mental health, it is important that officers proactively assist inmates in accessing adequate treatment to stabilize to improve their mental health. It must also be highlighted at this point, that the DOP Statistics on YO held at the Wataraka Training School that are published each year, provide information on their 'mental disposition', using labels such as 'normal', 'defective', 'aggressive', 'regressive', 'mutual sex tendencies' and 'homosexual'. There is no information on the methods used to conduct such assessments and by whom they were conducted. Such labels carry the risk of stigmatizing the YO and adding to the distress they suffer during detention. The purpose of using outdated and inappropriate labels to classify the mental health of young persons in custody is unclear.

6. Pallansena Correctional Facility for Youthful Offenders

Pallansena is a youth correctional centre within the purview of the DOP and was mentioned frequently in the Commission's conversations with the SP of HWC and YOs held at Wataraka, as it is the institution where convicted YOs are sent as punishment for committing prison offences, as per Section 11 of the YOTO.

A YO would be sent to Pallansena Youth Correctional Centre based on the decision of a Prison Tribunal if found guilty of a prison offence. When a YO is sent to Pallansena, their status is changed to that of a convicted criminal. While the Wataraka Training School functions as an alternative to incarceration for YOs, young persons are incarcerated in Pallansena. Thus, a crucial judicial decision, which alters the status of a young person to that of a person convicted of a criminal offence, is made by a quasi-judicial body such as a Prison Tribunal. As discussed in the chapter Discipline and Punishment⁷⁶⁸, the preservation of due process rights by the Prison Tribunal can be questionable as offenders are not allowed access to a lawyer to examine witnesses and evidence, and a conviction rests solely on a guilty plea or is based on the information provided by the SP.

⁷⁶⁸ For a detailed discussion, please refer chapter Discipline and Punishment.

7. Early release mechanisms

Rule 28 of the Beijing Rules states that, ‘conditional release shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time’.

The YOTO specifies that a Minister may after one year from the commencement of any term of detention, discharge a YO on license, ‘if satisfied that there is a reasonable probability that the person detained will abstain from crime and lead a useful and industrious life’.⁷⁶⁹ Circular no.7/2006 of the DOP states that the early release of YOs is based upon qualifications set out under section 9 of the YOTO, which require them to spend one and half years at the YO school and maintain good conduct, having successfully completed a Home Leave and not charged for more than two offences (charges) at the Training School.⁷⁷⁰

The Commission was informed by officers that no young persons have been sent home on license prior to the completion of three years. The YOs at the Wataraka Training School also seemed to not know this provision exists, with many young persons stating they had to finish their three-year sentence to be released.

The Commission was informed by officers in HWC and the focal point for Prisons at the MOJ that YOs are not produced before a License Board for a number of reasons. The primary reason for this is that many of them may not be able to meet the criteria for being released on license, as required by Circular 7/2006. The circular stipulates that the field visit conducted by a Welfare Officer for the YO must confirm the opportunity to engage in employment after release, as well as the need for accepting family and guardianship, which are considered difficult conditions to fulfil. It was also reported to the Commission that delays attributable to the MOJ when applying for Home Leave and License Board after one and a half years of serving the sentence, would result in the remaining one and half year sentence being concluded by the time the application is processed. As a result, despite the legal provisions in place, YOs are not produced before a License Board for early release evaluation.

In an interview with the Rehabilitation Division of the DOP, and this was also raised by the SP of Wataraka Training School⁷⁷¹, the Commission was informed that the number of prison offences, and self-harm, committed by YOs in the Wataraka Training School has increased rapidly. This is because YOs convicted of committing offences in Wataraka are sent to Pallansena Youth Correctional Centre as punishment where they would be treated as convicted offenders and their sentence is deemed a term of imprisonment rather than ‘training’. This would then mean they would be subject to the general rules of remission and reduced sentences.⁷⁷² As a result of remission calculations, the aggregate sentence they are

⁷⁶⁹ YOTO 1939, s 9(1)

⁷⁷⁰ Department of Prisons, Circular No 7/2006.

⁷⁷¹ Meeting with S.V.H. Priyankara, Superintendent, Homagama Work Camp (Wataraka Training School) (held at the Human Rights Commission of Sri Lanka Head Office, 6 June 2018)

⁷⁷² For a detailed discussion on remission of sentences, please refer chapter Rehabilitation of Prisoners.

required to serve in Pallansena would be less than the mandatory three years required to be spent in Wataraka, which in practice results in persons serving sentences in Pallansena being released earlier than those at Wataraka. Officers of the Rehabilitation Division as well as the SP of Wataraka alleged that YOs from Wataraka commit offences deliberately, in order to be sent to Pallansena, which would result in early release.

Such a glitch in the system undermines the aims of the training school and youth rehabilitation, as it causes YOs to become inclined to commit prison offences so as to be treated as convicted offenders to be eligible for remissions and early release, which incentivizes the commission of offences in Wataraka. This highlights the need to amend the existing procedure for early release of YOs to incentivize good conduct with the promise of early release.

8. Treatment and conditions of Young Offenders in closed and remand prisons

At the YO Ward in NRP, where sixteen to twenty-one-year-old prisoners are held, the Commission came across a young boy who said he was fifteen years old but appeared to be closer to the age of thirteen. He was rather hesitant to speak to the Prison Study team, was visibly shaken, and started crying as soon as he began speaking to anyone. He had never been to school, had severe difficulties reading or writing and had a limited vocabulary. He mentioned that he worked at a fish market to support his younger sister, cousin and grandmother and his employer had asked him to deliver a package to someone, which he did. Someone informed the police who he said arrived within a very short time and arrested him, as the package contained drugs. While in custody, they forced him to kneel, beat him and interrogated him. He said he told the police he was given the packet by his employer but his employer was never arrested. He had no access to a lawyer and was sentenced to spend three years at Pallansena, a correctional facility within the purview of the DOP. From court he was sent to NRP to be transferred to Pallansena. Every time he spoke, he would be close to tears and expressed concern about the well-being of his grandmother, sister and cousin.

8.1. Segregation of Young Offenders in prison

The Beijing Rules emphasize the need for separation of YOs from adult offenders to avoid the risk of ‘criminal contamination’ while YOs are held in detention pending trial.

According to DSO 420⁷⁷³, YOs should be segregated from the general prison population and this is carried out in most prisons, although the age range for YOs observed in prisons is not

⁷⁷³ DSO 1956, s 420

uniform across all prisons.⁷⁷⁴ For instance, the YO wards at BATRP and BRP contained remandees up to the age of eighteen while the YO ward at CRP contained inmates as up to the age of twenty-two. The Commission was informed by officers that sometimes, a remandee who was older than the stipulated YO range may still be held in the YO ward when he ‘looked’ younger, in order to prevent the remandee from being subjected to ill-treatment by adult inmates. There is no segregation based on age in the female wards; since the women population in prison was significantly smaller than that of the men, there was no separation between the women.

There were instances where prisoners would be subjected to ill-treatment due to age, which would be evident in the wards where the age range was broader as opposed to wards which housed under eighteen-year-old YOs together. In PCP it was noted that the male YOs would have to do favours or perform tasks for the older prisoners in their wards to obtain sleeping space on the floor. If they did not adhere to this, they would have to sleep in tight corners and at times, near the toilet commode as there was not enough space in the ward for all the YOs to be allowed a place to sleep due to overcrowding. Although the younger prisoners felt they were cornered into such treatment, older individuals who were newer entrants to the prison were also subjected to such treatment. A seventeen-year-old YO at WCP, who was convicted and pregnant at the time, mentioned that an inmate asked her to pick a parcel which was thrown from outside over the wall and she obliged. An officer caught her with the parcel which was found to contain contraband. The YO was then reportedly slapped by the officer in front of everyone.

8.2. Security issues

In order to segregate the YOs from the adult prisoners, as is required by law, some prisons limited the amount of time they were allowed to spend outside in order to prevent their interaction with adults. Hence, YOs in adult remand prisons often complained about restricted outside hours.

At BRP, the Commission noted that YOs held at the prison could spend only a short amount of time outside their wards/cells due to security reasons as a gym was being constructed at the prison, which meant that YOs were allowed minimal outside time. During a follow up meeting with the SP, he informed the Commission that after the Commission’s visit, YOs were allowed to spend more time outside as the authorities had constructed a special area for the YO with partial open space containing books. Similarly, it was noted in NMRP that YOs were locked in a small room along the pathway to other wards and were locked for most of the day to prevent interaction with the adult prisoners as NMRP is an overcrowded prison and preventing prisoners from interacting with each other is difficult due to the close proximity of the wards.

⁷⁷⁴ For a detailed discussion on the segregation of YOs in prison, please refer chapter Accommodation.

8.3. Ill-treatment in prison

YOs in remand prisons are subject to similar levels of physical violence that is prevalent in all prisons, including receiving the ‘welcome slap’ and collective punishments, i.e. the misdemeanour of one YO would result in all inhabitants of the ward being assaulted. Security measures to prevent YOs from mixing with adults, for instance, by prohibiting them from going to a certain section in the prison where ‘special prisoners’ are held, would also be negatively reinforced with the threat of violence if they did not follow orders. Young inmates reported that if two of them have an argument, prison officers would assault both prisoners without inquiring into the matter. As was evident in the Wataraka Training School, prison officers around the country use physical violence as a means to subjugate and control young persons and discourage expressions of unfavourable behaviour and acting out⁷⁷⁵. For example, YOs in KGRP who are housed inside the PH, as the prison does not have a separate YO ward, informed the Commission that prison officers would respond with physical violence if some of the young boys teased the older prisoners held in the PH.

The youngest remandee the Commission interviewed at NMRP claimed that the guards would assign tasks for them to complete during the week. This respondent was tasked with sweeping the ward every morning, and if he did not sweep the ward to the satisfaction of the guards, he stated that he would be beaten. The remandee also stated that the guards would threaten them that if they do not do a good job, they have to expect a beating. Due to such fear, YOs would be reluctant to express their grievances to the staff since they believed it would make them more vulnerable to reprisals by prison guards. Similarly, an inmate from JRP stated:

“If we are loud or make some noise, they will hit us. In the night, the officers would be drunk when they come here, so even if we make a small noise, they will say we are making a lot of noise and hit us. They hit us with that black stick. Around two to three shots, they don’t hit more than that but if they bring broom sticks then they will hit with that too.”

Remandee YO, JRP

The experience was visibly traumatic as the young persons struggled to share these experiences with the members of the Commission. It should be noted that section 67 of the PJDL states that ‘all disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned’.⁷⁷⁶

⁷⁷⁵ For a detailed discussion, please refer chapter The Continuum of Violence.

⁷⁷⁶ PJDL 1990, r 67.

8.4. Access to education in prison

Unlike the YOs at the Wataraka Training School, in all except one prison visited by the Commission, YOs did not have access to education. However, in an interview with an eighteen-year-old remandee at GRP, it was brought to the Commission's notice that classes were conducted at GRP on subjects such as Sinhala, History, Buddhism, English and Mathematics five days a week from 0900h to 1200h or 1430h. Each subject had a different teacher but when asked if they had an examination, they said they were only being equipped with the necessary tools which would assist them to reintegrate into society and did not have access to sit for exams. While the members of the Prison Study team were interviewing prisoners at GRP, they were able to witness these classes in session but were unable to speak to any of the instructors during the time of the visit.

The lack of recreational and leisure activities available for young remandee boys was quite evident. Most YOs were observed spending their day watching television or playing carrom inside their wards. The majority of YOs spent their time indoors, without being engaged in any meaningful activity. The lack of recreational activities was highlighted by many YOs, who complained about being unproductive and forced to think about their grievances, as their minds were idle all day. As a remandee at BATRP said:

“We don't have anything for entertainment. There are so many inmates who cry while think about their family. Me too. To be honest, I also cry when thinking about my family. Yesterday evening, there was an eighteen-year-old brother who was thinking about his sister and crying. His father and mother are abroad. He was living with his younger sister; he always cries when he thinks about his sister. We don't have any entertainment here. We have a carrom board but only four people can participate at a time, so others have to be sad and worried. We stay here alone, so we think a lot.”

The hidden social cost of pretrial detention of juveniles is the number of young persons spending time in prison, rather than learning new skills or being engaged in productive activity, which would eventually contribute to the national economy. Young persons held in remand would find it harder to find employment upon release due to the stigma associated with being imprisoned and the time spent being inactive would reduce their relative employability.

8.5. Delayed transfers to correctional facilities

The CYPO states a young person (person between the ages of fourteen and sixteen) may be remanded at a remand home or in the custody of a fit person, to enable relevant information to the case to be obtained and until a detention order to the certification or detention school comes into effect.⁷⁷⁷ The same Ordinance also states that young persons should not be

⁷⁷⁷ CYPO 1956, s 10

detained in prison, but rather a remand home, unless they are of so unruly a character that they cannot be detained in remand homes and must be held in a prison.⁷⁷⁸

According to the DSO, YOs are allowed to stay only in selected prisons until the CGP decides on the place to which he should be transferred.⁷⁷⁹ However, the Commission noted a number of individuals under the age of eighteen in prison awaiting transfer to the Wataraka Training School or Kantharkadu Drug Rehabilitation Centre. Hence, some of them would be at prisons, such as WCP, for a minimum of at least five days. The Commission came across a fifteen-year-old YO in BATRP who said that he was in prison for twelve days in transit while waiting to be sent to a certified school in Atchuvely in Jaffna. He was also under the impression that he would be sent back to his parents if he behaved well during his time in prison. The provisions which allow young persons to be detained in prison on the basis of “unruly character” traits, a subjective threshold for which no assessment guidelines are provided, puts persons between the ages of fourteen and eighteen at a risk of being held in adult facilities, where they could be subject to numerous rights violations.⁷⁸⁰ Hence, there is a gap in the legal framework where the protection afforded to young persons in custody is concerned, since they can be held in a range of detention facilities, without any guidance provided to the authorities in making decisions as to which facility is most suitable.

9. General observations

The conditions in which YOs are housed at the Wataraka Training School raise concerns for their mental and physical health due to the lack of specialized staff members and counsellors to care for and ensure the personal development of young persons in custody. The repeated mention of emotional stress and reported cases of self-harm point to the failure of the facility, and the state, in rehabilitating YOs in order to effect their integration and acceptance in society. The majority of the YOs found in detention are from impoverished backgrounds and have experienced difficult family relationships and even abuse. They are in dire need of psycho-social support in order to realize their potential and re-integrate into society successfully. However, the current conditions of youth detention centres may only serve to aggravate their physical and mental development.

YOs instead of receiving mentorship and guidance from strong role models who provide inspiration and encouragement to exit the cycle of crime, and prevent recidivism, are supervised by officers who are not trained in juvenile correction and use physical violence and verbal abuse as the key means through which they maintain order and discipline.

If YOs mingle with adult and recidivist offenders, it creates the risk of prisons becoming breeding ground for further criminal activity. YO wards in adult prisons in the interim, must be completely separated from adult sections inside the prison premises, similar to female

⁷⁷⁸ ibid s 15

⁷⁷⁹ DSO 1956, s 316

⁷⁸⁰ For a detailed discussion on the lack of means of communication in prison, please refer chapter Contact with the Outside World.

sections, as the current approach of locking them in the ward all day is not conducive to their physical and mental development.

An immediate intervention by all agencies vested with protecting and promoting the interests of young persons in custody is required to transform the philosophy and functions of youth detention facilities, to provide access to rehabilitation, personal development skills, mental healthcare and aftercare. The allegations of physical violence must immediately be inquired into and action taken to ensure a zero-tolerance policy on ill-treatment and torture is adhered.

22. Foreign Nationals in Prison

"If we ever, God forbid, tried to go to the office with a complaint about someone, every time it would be the same response, – 'have you forgotten where you come from? These are our people. Keep to yourself'. In filth, that officer spoke to me in filth."

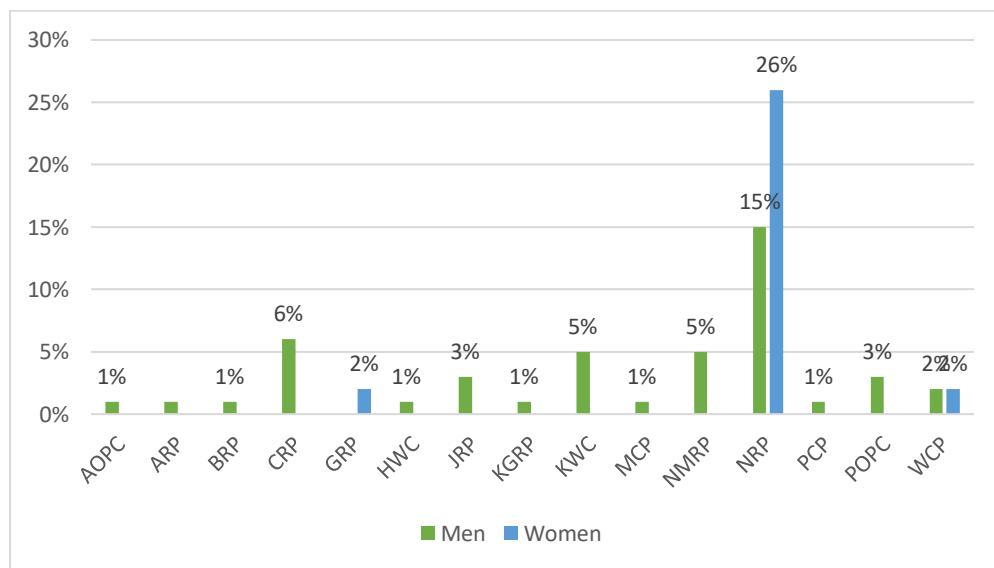
ACP, Life Prisoner

1. Introduction

Prisoners of foreign nationalities are at a disadvantage in the Sri Lankan prison system for a number of reasons mainly because the impact of adverse treatment and conditions faced by local inmates is exacerbated in the case of foreigners due to the lack of familial support and local contacts, as well as language and cultural differences. Within such an environment in which their vulnerability is exacerbated, an extended detention period in a foreign country has a severe adverse impact on their physical and mental health. A prisoner described it thus, "But when you go to sleep and wake up in the morning – you think, when is it ever going to end? Is it ever going to end?"

The majority of foreign prisoners are housed at WCP, ACP, CRP, NMRP and NRP. In the sample of the Commission's study, foreign inmates constitute 3% of the male respondents and 3% of the female respondents.

Graph 22.1 Foreign inmates in the respondents across prisons



Of the respondents at NRP, 15% of the male and 26% of the total female respondents were foreign nationals. Since NRP is the remand prison closest to the Bandaranaike International Airport (BIA) foreigners arrested at BIA for various offences are often remanded in NRP. Of the male respondents at CRP and NMRP 6% and 5% respectively are foreign nationals. These

persons consisted mostly of those who were arrested by police stations in the Colombo district for offences such as visa violations, financial fraud and credit card fraud.

2. Arrest process

According to the narratives of foreigners, the arrest process of foreign nationals typically involved the inmate being held for up to twenty-four hours in police custody for an initial investigation. Most foreign inmates stated they were not provided any food or drink or a chance to sleep during the first twenty-four hours in police custody. When they are produced before a Magistrate, a detention order would be acquired to hold them in police custody for up to six more days in the case of drug offenders. Four interviewees stated they were beaten by the police during the investigation period, and one interviewee stated that he was not given food or water for three days because he refused to provide a written statement unless a representative of his embassy was present. The same inmate stated that following a medical examination conducted at the end of the detention period, the doctor advised that he be examined by a psychiatrist.

Many foreign nationals interviewed during this study stated they were not allowed to contact their family or embassy soon after their arrest, and their requests to have a lawyer present during the police interrogation were not heeded. One for instance said:

“The first time I asked for a lawyer, they told me that Sri Lanka is a poor country and they won’t give me a lawyer. I told them I needed someone who would translate for me and they told me no translation and no lawyer because Sri Lanka is a poor country, and if I didn’t cooperate then I’d get the death penalty.”

3. Language barriers in the criminal justice process

The ICCPR guarantees that the defendant shall have the right to have legal proceedings conducted in a language s/he understands, and if not, shall have the right to interpreters at each step.⁷⁸¹ Section 4 of the International Covenant on Civil and Political Rights Act⁷⁸² (hereinafter referred to as ICCPR Act) also affirms that a suspect is entitled to an interpreter when s/he cannot understand the language in which the trial is being conducted.

The primary language spoken by police officers, prison officers and local inmates as well as the language in which Magistrate Court proceedings, in all provinces except those where the language of administration is Tamil, are conducted is Sinhala, so foreigners have to face language barriers at multiple points during the criminal justice process. The lack of interpreters and English-proficient personnel may amount to a violation of due process

⁷⁸¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art 14(3).

⁷⁸² International Covenant on Civil and Political Rights (ICCPR) Act, No. 56 of 2007, s 4.

rights.⁷⁸³ During the arrest process, many foreign nationals complained that the statements they provided in varying levels of English language competencies were recorded by the arresting officers in Sinhala, the contents of which were not explained to them before they were asked to sign it. As a condemned inmate at WCP stated:

‘They kept me for six days and took a full statement from me. I knew a little bit of English, it’s not that great but when I answered his questions in English, his understanding of English was even less than mine, the one who took the statement. What he had written in Sinhala at the time, I learnt what it was much later. He didn’t read the statement out to me. They wrote in Sinhala and they didn’t explain anything to me. Just told me to sign it. That’s it. They threatened to hit me if I didn’t sign.’

The right to comprehend legal proceedings is a fundamental component of the internationally and nationally guaranteed right to prepare a defence as one cannot defend oneself if one doesn’t comprehend the court proceedings. Yet, language barriers prevent foreigners from following and comprehending court proceedings, which are ordinarily conducted in Sinhala in the lower courts. Almost all interviewees stated they did not understand what was happening at the Magistrate Court when they were first remanded – they were simply told they had to be in prison for the next fourteen days by the lawyer or judge, or they learnt about the fourteen-day remand period upon admission to the prison.

Requests for translators during trials have reportedly caused delays of up to two to four years at the High Court. One interviewee stated his case was delayed for four years at the High Court when he requested an interpreter, at the end of which he withdrew his request in order to expedite the commencement of the trial proceedings, as his competency in English and Sinhala had improved during the four years spent in remand. Another remandee interviewee stated he was required to pay Rs. 17,000 to have his B-report translated to English, as he was unable to comprehend the Sinhala text. It must be highlighted that foreign nationals have limited access to their personal finances while in a foreign prison, in a country where they often do not have any contacts outside prison. In such a context, an accused being required to pay a high fee to understand the charges that are filed against them would amount to a violation of due process rights.

Convicted foreign nationals informed the Commission that they had spent a prolonged period of time in remand prison, on average at least five years. The extended time spent in remand forces persons to plead guilty to expedite the process, as they can become eligible for repatriation once their case is completed and thus allowed to be sent home. This is illustrated by the request of a group of foreign national women in NRP who wished to communicate their collective decision to plead guilty to the Ministry of Foreign Affairs (hereinafter referred to as MFA) in order to expedite court proceedings and become eligible for repatriation to their countries. Defendants feeling compelled to plead guilty in order to

⁷⁸³ For a detailed discussion on the issues of defendants’ inability to understand court proceedings, please refer chapter Legal and Judicial Proceedings.

conclude proceedings illustrates a flaw in the criminal justice process which restricts the ability of persons to enjoy due process rights.⁷⁸⁴

4. Access to legal representation

"I'm going to court without a lawyer because in here there is no means of communication."

Without access to finances and legal information, foreign nationals find it extremely challenging to procure competent lawyers to represent them in court because once they are in prison, they have no means of inquiring about legal services and local lawyers. When this is coupled with the limited means of communication in prison to arrange for finances and explore options for legal services, foreign nationals are in a dire predicament and left without many alternatives. As one prisoner said, "We get advice and suggestions from inside the prison. Prisoners tell us. We don't have any source of information upon which we can base our decision on how and which lawyers to pick, no source as such." This could result in prisoners functioning on the basis of wrong legal advice, such as advice to plead guilty or being exploited by lawyers.

Foreign inmates hence become more vulnerable to exploitation and are exposed to malpractice when they hire legal representation without checking the credentials of, or knowledge of the competence and reputation of the lawyer, as was stated by many interviewees who alleged they were deceived or cheated. As a prisoner stated:

"I had five lawyers. All were private lawyers. We speak to the people here and we hire a lawyer. The lawyers don't know anything about our case but they say they can secure our release within a certain period. They lie to us and take our money. After four to five months we realize what they have done and we change the lawyer."

Another said:

"The first time we went to the Magistrate Court from police custody, there was a lawyer there. I thought he was arranged for us by the people who hired us. He said, "Give me whatever money you have, I am your lawyer", but at the time, we didn't know he was lying to us. We still gave him the money he asked for, money that we had in hand. After that he never spoke to us again and never showed his face again. We gave him 600 USD. We never saw him again."

Foreign national remandees quoted some of the highest aggregate legal fees paid by inmates, in comparison to all other inmates interviewed during this study, partly because of the false representation made by lawyers, which causes them to waste large sums of money, as described by a prisoner as follows:

⁷⁸⁴ For a detailed discussion on prolonged periods of remand, please refer chapter Legal and Judicial Proceedings.

"Anyway, I came here again after the Court of Appeal and then my lawyer said he couldn't continue my case. You know this is cheating, after he took 30, 000 USD - a President's Counsel lawyer. [Later] I found another lawyer. I called him and he also asked for a big amount of money – 15 000 [USD] at the beginning, and then 15 000 [USD] after one month."

This is in contrast to a foreign national who has family members residing in Sri Lanka as well as local contacts and is also able to converse in the local language who said:

A: "I got a lawyer.

Q: Did you hire him yourself or was he appointed to you by the court?

A: No no, my father and mother get together and help me. The lawyer always comes for every hearing. He always says: 'How are you doing, what happened? There is less time and we have to do the trial and everything so you need to support me so I can get you released from the case'."

5. Contact with embassy

Rule 62(1) of the SMRs states foreign nationals should be allowed reasonable facilities to communicate with the diplomatic representatives of the State to which they belong. Section 201(1)(b) of the SRs allows a prisoner to meet a consular representative on any week-day, during the hours fixed by the SP.

A circular issued by the CGP in 1992⁷⁸⁵ requires the prison administration to immediately inform the DOP of the imprisonment of foreign nationals, so that the relevant local embassy can be informed. Another circular⁷⁸⁶ requires the prison administration to send reports about the foreign nationals in their institutions to the relevant local ambassador's office, with a copy to the MFAs.

As embassies and consulates are the main link foreign nationals have to their country, as well as their primary source of information and support in a strange country, the extent of the inmate's correspondence with their embassy and the level of support they receive is a significant determinant of a foreigner's treatment in prison. Only two interviewees stated that their embassies were called during the arrest process, while other interviewees were reportedly not allowed any contact with representatives of their embassies or consulates while in police custody despite their many requests. Some interviewees also stated that their embassies were not informed of their imprisonment by the prison administration after their admission, despite the numerous requests made to the Welfare Branch. While many embassies periodically visit prison and provide their nationals with soap, shampoo, food and

⁷⁸⁵ Department of Prisons, Circular No 20/92

⁷⁸⁶ Department of Prisons, Circular No 20/2015

other items, certain embassies are non-responsive and reluctant to intervene in these matters and hence do not make many visits. As inmates stated:

“Our embassy here, they have moved back. So it’s only our embassy in India. When our embassy was here, we tried several times to contact them but they didn’t do anything... because in our country we have so many issues, the eastern side and the northern side, and our Ambassador is from the northern side. Most of us here are from the eastern side. So they didn’t do anything.”

CRP, Remandee

“They have already made their point very clear. From the beginning, they made it clear that the government, my government, does not interfere in the judicial process and does not provide any financial support. These two statements, they made very clear.”

NMRP, Remandee

Prisoners stated that requests to contact their embassies are not readily attended to by the prison administration. The Commission received a total of seven requests from foreign national remandees to contact their embassies and inform them of their imprisonment, and/or need for legal representation. Interviewees also indicated that prison administrations are not always accommodating when representatives from an embassy pay a visit to their citizens, as expressed by a remandee at NRP as follows:

“The last time the embassy people came, madam wanted to go and drink tea. Now the embassy was asking us one by one if we had any problems here so we were telling them. Madam kept looking at the time again and again and she was telling the other officer there in their language, in Sinhala, that she wanted to go and drink tea, why weren’t we leaving. So madam kept telling the embassy people over and over to go and come back later, and said we couldn’t talk to them then. So while our conversation with the embassy people was incomplete, she sent them off. So the man (from the embassy) said that what she did was wrong, but they stood up and left.”

Another prisoner from CRP said:

“Sometimes they try to rush it. They say you have five minutes. This is [my] embassy. They come here from another country to meet me and they always say this and they don’t even allow me to talk to them in the SM Branch. Because, you see the visit room there? It’s like dogs barking there and they cannot hear anything.”

It should be noted that the DOP has always promptly facilitated the visits of embassies who do not have a presence in Sri Lanka or foreign legal representatives in every instance the Commission has referred requests to them. The Commission has also been informed of multiple unsuccessful attempts made by certain prisons to contact an embassy, in

accordance with the requests of the foreign national because the embassy has not been responsive.

6. Treatment and conditions in prison

None of the foreign nationals interviewed by the Commission were given an orientation or any information about the rules and regulations to be observed in prison upon admission. Orientation is to be conducted by Rehabilitation Officers, who themselves mentioned their need for language training so they are able to communicate with prisoners who do not speak Sinhala.⁷⁸⁷

Access to basic provisions

One of the biggest problems faced by foreign national inmates is the lack of access to provisions, such as soap, shampoo, razors, sanitary napkins, etc. which remandees are expected to acquire from outside since they are not ordinarily provided by the prison administration. While local prisoners are able to arrange for the provision of these necessities through their family visits, most foreign prisoners do not have family or contacts in Sri Lanka and limited access to their finances, and are thus dependent on their local counterparts or donations made to the prison to acquire basic necessities. Foreign national remandees stated that in prison they had in their possession only the few items with which they entered the country. As two inmates expressed it:

“I didn’t have any clothes I had only brought two *shalwar kameez*, one of which had completely torn... its sleeves and whatever had torn.”

NRP, Remandee

Q: “Did you sleep on a mat or?

A: Nothing. Nothing.

Q: What did you have with you that time?

A: Nothing. I had only my clothes.”

CRP, Remandee

Foreign female remandees held at NRP informed the Commission they have to clean the bathroom of the ward in which they reside or wash the clothes and dishes of Sri Lankan inmates, and provide services, such as eyebrow threading, in return for necessities like sanitary napkins, soap, shampoo and biscuits from the local women who receive frequent

⁷⁸⁷ For a detailed discussion on the training needs of the prison staff, please refer chapter Challenges Faced by the Prison Administration.

family visits and possess sufficient supplies of necessary items. As one said, 'Basically, we are made into slaves of the Sri Lankan people'.

The male foreign inmates held at WCP where convicted persons are held, stated they found it difficult to access necessary provisions through local prisoners because the number of visits received by convicted prisoners is less in comparison to remandees⁷⁸⁸, and they have to barter the bread they receive as part of the foreigners' diet for razors and other items. Some foreign inmates reported they had access to provisions after their family members advanced a sum of money to the store, which they are able to utilize to purchase necessities. It should be noted this is a practice followed only in some prisons and is however limited to individuals who are able to find ways to communicate with their families, and whose families have the financial means to advance money to the prison authorities. This was described by a prisoner thus, "Since I have been here, we have tried to make friends because that is what sustains us foreigners. We try to make friends so from there we can get soap to bathe, to wash our clothes, toothpaste, toothbrush and all that".

The foreign inmates at the newly constructed ACP informed the Commission that even though the prison has the facility to allow inmates to purchase provisions after a sum of money is deposited at the stores, their family members are required to come to the prison and manually deposit money, as a wire transfer service is not yet available, which once again places foreign national inmates who have no local contacts at a disadvantage.

Food

Foreigners frequently complained they are unable to consume the food provided by the prison administration, as they found it too spicy for their palette and were not used to consuming rice three times a day. Although they are provided a foreigner's diet, comprising of a small loaf of bread, an egg and boiled vegetables and a packet of milk powder (usually provided once every twenty to thirty days), it is said to be insufficient in quantity. Remandee foreign inmates who do not have visiting families to provide them with food, are therefore left without recourse.

Although a number of the aforementioned grievances are experienced by many local inmates in prisons, the suffering of foreign nationals is exacerbated in an environment in which they are unfamiliar with the local culture, traditions and language, and lack the support of their family, which in turn aggravates the impact of such conditions on their physical and mental well-being. The Commission has observed that foreign nationals from all countries often form a group to facilitate mutual support and kinship, bound by the similar difficulties and challenges they face.

⁷⁸⁸ Remand prisoners are allowed family visits six days a week (except Sundays).

Communication with family

“I’m supposed to be the husband who looks after his family. A man who cannot keep his family or support his family is worse than an infidel. He’s worse than a crazy man.”

Remandee, NMRP

SMR 68 reaffirms that every prisoner has the right to inform his or her family about their imprisonment and transfer to another prison. SMR 58(1) states that prisoners must be allowed contact with their families at regular intervals both by correspondence in writing and electronically where available, and be allowed to receive visits. The national legal framework, which requires the DOP to facilitate prisoners’ contact with the outside world, applies to foreign national prisoners as much as it applies to locals.⁷⁸⁹

Prisons in Sri Lanka, except WCP, are not equipped with phones to allow inmates to communicate with their families, and since foreign nationals have no family to visit them in prison in Sri Lanka, they are virtually cut off from their families during the time they spend in prison. As one stated:

“In February 2016, they came from the ICRC and one of the ICRC personnel took my mother’s number and he called her and my mother started crying. She thought I was dead. She didn’t know anything about me and she didn’t have any information about me. She was crying. She was very happy someone contacted her after seven months”.

Most interviewees reported they were not given the chance to inform their families of their arrest, nor were they allowed to let their families know they were in prison after their admission to a remand prison. Their only recourse was to send messages through remandees who are released from prison or through the use of unauthorized means of communication. The Commission came across at least seven foreign nationals, six of whom had already been sentenced, whose families were still unaware of their imprisonment. Six of these inmates requested the Commission to contact their family members to inform them of their imprisonment. The Commission was requested by four convicted foreign inmates at the ACP to contact their families and inform them of their transfer from WCP to the new prison. “My family still doesn’t know I am inside. They know I am in Sri Lanka but they don’t know I am inside. How to tell? No phone, no nothing, no contact” stated a foreign national in remand for two years. Although WCP has phone booths, which the inmates are allowed to use to call their families periodically, such a facility does not benefit foreign nationals since the phone booths do not have IDD facility.

The loss of communication with their family is the single most repeated grievance expressed by every foreign national at every prison with whom the Commission spoke. Alienation from their family and the lack of familial support reportedly adversely impacts their mental well-

⁷⁸⁹ For a detailed discussion on the lack of means of communication in prison, please refer chapter Contact with the Outside World.

being during this stressful time, and could potentially impact social reintegration once they return. One inmate expressed it as follows, “I’m feeling bad because I’m missing my family, I’m missing my friends. I’m not hearing anything, I don’t hear their voice, nothing. So, I’m feeling so bad. I’m feeling very very bad. Feeling bad”.

Section 204(1) of the SRs affirms the right of remand prisoners to communicate with their family, friends or legal advisers in writing, and Section 228 of the same states that convicted prisoners are allowed to send one letter every month.⁷⁹⁰ Yet, not all prisons allow foreign nationals to send letters to their families. This is partly because letters will be written in the inmate’s language of proficiency, which the prison administration may refuse to forward since it cannot examine the substantive contents of the letter due to the lack of proficiency in that language. Foreign interviewees informed the Commission that although they have written letters to their family members, they do not know if the letters were sent since no response was received. In many cases, inmates reported they have to rely on remandees who are being released from prison and the visitors of other inmates, and visiting organizations, such as the ICRC, to send messages to their relatives. As a female remandee at NRP said:

“I wrote more than twenty letters to my mother. I apologized, I’m crying, I tell her I’m sorry I’m sorry I’m sorry, one million times. I also sent letters to the embassy and I wrote in Czech, English, whatever they wanted but after seven months my mother hadn’t received even one letter. She thought I was dead. They took the letters from me and threw them.”

The SPs of certain prisons, including GRP, NRP and CRP, did inform the Commission of the steps taken to provide communication facilities to foreign nationals. However, such efforts are reliant on support from the local embassies and funding for the prison which, when inadequate, can hamper the efforts made by the SP. The need to maintain family contact is a widely recognized right of prisoners and a fundamental component of the rehabilitation process. The DOP is hence duty-bound to provide foreign nationals with adequate and efficient means to periodically communicate with their families.

Language barriers and discrimination within prison

“When we came to this prison, it didn’t feel like we were just under one or two officers. It felt like we were under all those who were wearing the white prison outfit [convicted prisoners]. But the fault lies with the officers. That’s what they say right? It is a similar situation here.”

ACP, Convicted

As they cannot effectively communicate with prison officers due to language obstacles, i.e. not being able to speak the local language, foreign nationals from prisons around the country

⁷⁹⁰ For a detailed discussion on sending and receiving letters in prison, please refer chapter Contact with the Outside World.

complained that in an altercation between the foreign and local inmates, the prison officers are more likely to listen to, and accept the version of events presented by the local inmates. This often discourages foreigners from reporting grievances.

If foreign nationals are able to speak English, they will be able to communicate at least in a rudimentary manner with prisoners and fellow inmates. Those who don't speak English suffer the most in the prison system since they have no means to communicate with officers or fellow inmates, and cannot convey their grievances or lodge complaints. The SP of one prison also informed the Commission that such inmates face difficulties when they are produced before a Prison Tribunal.

Interviewees frequently also spoke about the discrimination and verbal abuse they had to face from local prisoners, which the prison officers would not intervene to prevent. Inmates who experienced such discrimination from prison officers stated:

"The racism of the Sri Lankans in the ward... they treat us as nobodies and they, the officers, are doing nothing about it. That day they said that we can only stay inside the room, that we can't come out of the corridor. We said 'Why are our fellow inmates giving us orders like this?' So that led to a fight that day. We fought and some of us sustained a few minor injuries. So when these officers came during the fight, they have racism in them, they don't even care to ask us what the problem was about. They only asked the Sri Lankans, and we don't understand Sinhala, all we know is that they lied so we were moved from that ward."

CRP, Remandee

"Here one officer, he hates me because I am foreign. He hates me. He said to [my] face, 'I will punish you twice.' It's not enough for him [that I am in prison]. I told him that it was my mistake, 'I didn't respect you, I will do everything for you. Whatever I have to do, I will do.' They tell me whenever you see an officer do something [wrong], don't talk about it. Close your eyes, otherwise they will beat you and send you to another prison. Here there's a famous verse, this is Sri Lanka, we are Sinhala."

Convicted, MCP

Many interviewees, both male and female, complained that when they try to access medical treatment, they are judged by doctors and medical staff who allegedly ask them details about their case and reprimand them for bringing drugs into Sri Lanka, even though they may not be in prison for a drug related offence. "Once I told them that I have this. This is the problem, they told me, 'oh you bring drugs and now you come asking for treatment, you people come here for the treatment.' I kept quiet because I was already under pressure - I was in total depression, total depression. I forgot about my disease" said a prisoner. Such treatment reportedly causes many foreign nationals to avoid requesting medical attention to avoid being subjected to derogatory remarks by doctors.

4. Repatriation and release of foreign national prisoners

Article 13.2 of the UDHR affirms that everyone has the right to return to their country, and Article 12.4 of the ICCPR states ‘no one shall be arbitrarily deprived of the right to enter his own country’.

Under the Transfer of Offenders Act (No. 5 of 1995), the government of Sri Lanka may authorize the transfer of a foreign national from Sri Lanka back to the country of their nationality, if such an agreement with the respective country has been signed. The Sri Lankan government has signed such bilateral agreements with, among others, India, Kuwait, Maldives, Pakistan, Thailand, United Kingdom and, United States of America. The process of repatriation is facilitated by the MOJ and the with the local embassy of the relevant State liaising between both governments. The Commission was informed by prisoners and prison officers that the process of repatriation is initiated by the relevant consular representative and the MFA after the consent of the prisoner to be returned to his/her country is acquired. The MOJ requires the DOP to confirm that the prisoner no longer has any pending cases against him or ongoing appeals. The personal details and biometric data of the prisoner are then recorded and he/she is also subject to a medical examination. Following the confirmation from the MOJ, the MFA and the embassy agree on the list of names of prisoners to be repatriated, and subject to approval from the host state, the logistic arrangements for the prisoner’s repatriation are undertaken by the relevant national government.

Repatriation procedures are allegedly highly bureaucratic and subject to delays due to the political and structural changes that take place within local and foreign ministries. Many foreign nationals who were eligible for repatriation inquired whether the Commission could play a role in expediting the process while others wished to write letters to the Ministry of Foreign Affairs in Sri Lanka as well as their home country in order to check the status of the procedure. Foreign prisoners expressed feeling hopeless when they did not receive updates on the status of their repatriation. As a prisoner from ACP expressed it, “I asked them, what is the matter Sir? It is not like we are asking you to free us. You will transfer us from this prison to the prison there. So, what is it? I have been here for ten years. This is a huge cause of grief for me”.

The advantage to the State and the taxpayer of repatriating foreign inmates is the reduced financial burden of providing for the needs of non-citizens for lengthy periods of time. Repatriation, as the foreign national prisoners themselves informed the Commission, would be beneficial to the individual well-being of foreign prisoners as they will be in their home country, where they do not have to experience the difficulties associated with cultural and language barriers. Foreign national interviewees frequently expressed their wish to be repatriated to their home country, primarily for social support through contact with their families as well as access to finances. Close proximity to their families will also improve their conditions of incarceration and mental wellbeing as well as assist reintegration into society post-release.

Where foreign prisoners who complete their sentence in Sri Lanka are concerned, a DOP circular⁷⁹¹ states that the prison must inform the Department and relevant local consulate as soon as a prisoner is released upon the completion of their sentence or by special pardon. According to the SP of one of the prisons, which was later reaffirmed by the then Commissioner of Administration and Intelligence, a court order to send the foreign national to the Mirihana Detention Centre must be sought a few days before the release of the prisoner. In the event of a delay in acquiring this order, the foreign national continues to be held in prison without a warrant of commitment. Similarly, foreign nationals who are not convicted and are in transit to Mirihana may have to be detained one night inside the prison or the entrance cell of a prison, without a warrant of commitment, since detainees are not accepted at the Mirihana Detention Centre after 1530h.

5. General observations

Grievances faced by foreign nationals are similar to the issued faced by many of their local counterparts but their experiences are compounded by various factors that are particular only to foreign nationals. These factors include navigating an unfamiliar culture, language and system, without any support from, or contact with their families, access to finances or legal representation, and in many cases with minimal assistance from consular representatives. Foreign nationals are often found grouped together and isolated from the local prisoner population, with which they find difficult to integrate due to language and cultural differences, which may also constitute a cause of conflict.

Foreign nationals spend long periods in remand prison and prolonged remand periods become a precursor to pleading guilty simply to expedite court proceedings, because a definite sentence is considered better than indeterminate remand. However, subsequently, many foreign nationals find that their contact with the outside world and access to provisions is worsened post-conviction when they are transferred to closed prisons. Hence, repatriation of consenting convicted foreign prisoners is desirable since their imprisonment becomes a burden on the taxpayer.

Repatriation procedures are rife with delays as they are subject to the efficiency of the receiving and sending nations, as well as the prevailing political context.

⁷⁹¹ Department of Prisons, Circular No 20/92

23. Women

"My husband consumes heroin and because of that I got involved in the hotel business and earned some money. My husband didn't make an effort to raise the children. We have three children. I thought of doing this because I wanted to raise them too, we had plenty to eat and drink; I did the hotel business at the same time. My husband still consumes drugs. It has been twenty-seven years since we got married, he has consumed drugs throughout all twenty-seven years. (crying)."

Remandee, BRP

1. Introduction

The Bangkok Rules focus on the specific needs of women and recognize women as a vulnerable group within the criminal justice system.⁷⁹² Their treatment should, thus, be reflective of their needs and realities and done with the aim of achieving substantive gender equality.⁷⁹³ Practical difficulties in its application must, therefore, be overcome so that outcomes for women, their children and their communities can be improved.⁷⁹⁴

This chapter first discusses the trends relating to the incarceration of women. It then analyses the issues that women have to grapple with when their distinctive needs are not provided for within the prison system. It also focuses on children and the impact of their stay inside the prison on their development.

2. Incarceration of women: trends and patterns

"It was my husband who put me there...I married when I was fifteen. He got me addicted to heroin, and he put me on the road to prostitution. It was my husband who sold me to different men for prostitution... Since he didn't have money to consume heroin, he sold me to people. Most of the time, we fall into the wrong company. The youth fall into the wrong society because of love. Thereafter we get addicted to illegal substances, then we get into prostitution like that."

Convicted Female, ACP

Women constitute a small proportion of the prison population. In the study sample, reflective of the total population of women in prison system, the percentage of women is

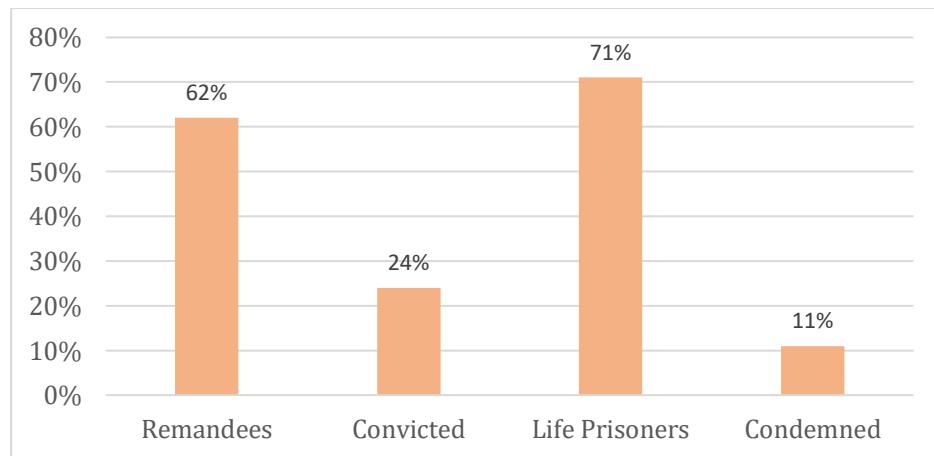
⁷⁹² UN General Assembly Resolution 65/299, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) 6 October 2010.

⁷⁹³ The Bangkok Rules, Preliminary Observation 1; Introduction 13, r 1

⁷⁹⁴ ibid, Preliminary Observation 11

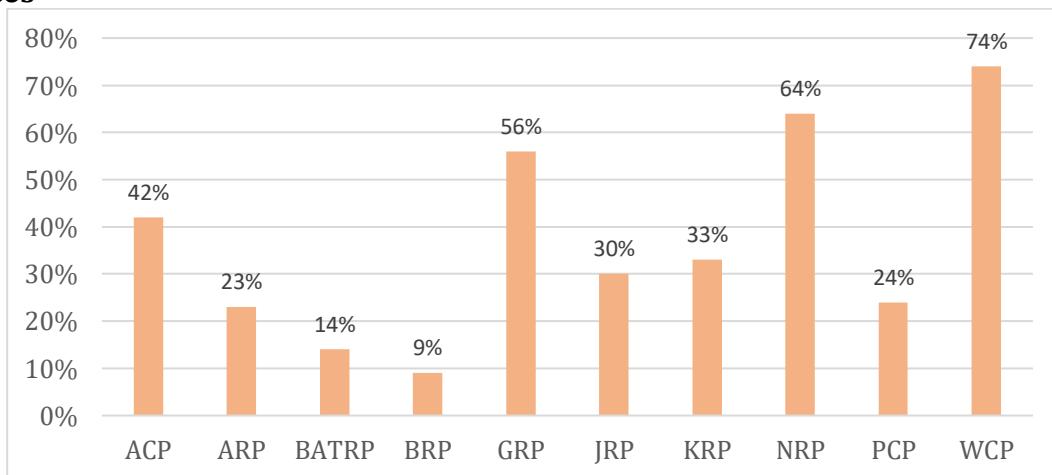
5.3%. Of this, the majority of female respondents were in prison for a drug related offence as illustrated by the graph below.

Graph 23.1 – Female respondents across prisoner categories in prison for a drug related offence



62% of female remandees, 24% of convicted females, 71% of females on life sentences and 11% of condemned female⁷⁹⁵ respondents in the study stated they were in prison for drug related offences. It must be reiterated that in each prison where questionnaires were administered, the sample of male respondents were selected using a random sampling method, while all the women in the female section willing to complete the questionnaires participated in the study. The purpose of this was to ensure the issues faced by women were adequately uncovered given the population of women within the prison system is small.

Graph 23.2 – Female respondents across prisons who are in prison for drug related offences



⁷⁹⁵ Please note there were seven women serving life sentences and eighteen women serving the death penalty.

The quantitative data indicates that the majority of female respondents in prisons in urban areas have been incarcerated for drugs related offences- 74% in WCP, 64% in NRP and 56% in GRP. NRP is the prison at which foreigners who are arrested at the Bandaranaike International Airport (BIA) for offences related to drug trafficking are held. For instance, 24% of the total female prisoner sample at NRP comprised of foreign women, the majority of whom were in prison for drug smuggling offences.

The observable trends in the qualitative data illustrate that the incarceration of women for drug-related offences is shaped by socio-economic factors. Often these women stated they resorted to dealing drugs to be able to provide for their families and feed their children. With the lack of employable skills or qualifications and limited access to employment opportunities, often due to lower literacy levels and impoverished family backgrounds, they would be drawn into selling narcotics as a relatively easier means of earning money. As one inmate from ACP recounted:

“My husband does not like this. When I came here, he was also in prison. He told me not to do this, and to find a way to live somehow until he was released. I have four children. That is why I am helpless. That is why I did this [dealt drugs], if not for this reason, I would not have done it.”

The fact that they had to shoulder the responsibilities of providing for the family when the male, who normally provided for the family was no longer in their lives, compelled them to engage in selling drugs. In many instances, the women stated they became involved in the drug trade when their husbands were imprisoned. As one inmate from GRP stated:

“My husband is always in remand as he uses drugs. When my youngest children were delivered, I had to take a lot of loans. They were delivered within twenty-four weeks. So, they had to be kept in incubators for two months and two weeks. I had to take loans to cover my expenses and there was no way for me to pay back those loans. That is why I sold drugs and then paid my loans.”

Drug dealing is seen as a means to earn money quickly and this perception appears to be due to their immediate environment, where they saw their family members engaging in the trade and reaping benefits within a short period of time. Despite the illegality of it and the serious penalties it carries they were socialised to consider it ‘normal’. As stated by an inmate from PCP:

A: “My husband did drugs. He destroyed everything. We had to sell our house. We lived on rent in the end. My husband is now married to someone else. It has been nineteen years since I separated from my husband. I worked in bungalows in Colombo and did manual labour. I did business this time. I mortgaged both my lands for a High Court case since I had to pay a fine of one lakh. I did this to transfer it back to my name. About six years went by. The one who had the deed frequently asked for the money. So, I engaged in the business and transferred it back.

Q: How did you meet these people?

A: Husband. I bought these [drugs] from places where my husband bought."

Additionally, due to the severity of the socio-economic difficulties they face, women appeared to be unaware of or unconcerned about the penalty, which points to the fact that in such instances the death penalty may be an ineffective deterrent.

The Commission also encountered instances of women who were in prison despite choosing not to participate in the drug dealing business unlike their family members. Such women were usually lured into committing acts, the true consequences of which they claimed to be unaware. They stated that the law enforcement authorities were not inclined to believe their claims, as they were judged by the actions of their family members. One inmate from KRP recounted that, "They have always lied about my case. There are other people at my house. They ran when the police come but I didn't run, so they took me in instead. That's what always happened". Another inmate from ACP stated:

"I'm not conducting any business. I don't even know anything about it. Our brother-in-law consumes, he consumes heroin. One day, I went to the bank to deposit my mother's money, and on the way back, my brother's friend gave a small parcel and requested us to give it to my brother-in-law. When we were returning the police checked the bike. They asked me where I've been. I said that I went to the bank to deposit money. Then they asked me whether someone gave something while on the way. Then I replied a small package was given to be delivered to my brother in law, but I didn't know what it was then. They asked for it while we were on our way and checked it and claimed that this was heroin, and asked where I was taking it. I said that we didn't know what it was and that a friend gave it asking it to be delivered to our brother-in-law and that was why we took it. After that, they asked us to go to the police station, and took us to the Crime Division and said that there was 2g of heroin, and filed a single case against both me and my sister."

Women alleged that law enforcement authorities framed them by fabricating charges and planting evidence where there was no clear evidence.⁷⁹⁶ As one inmate from WCP narrated:

"They went to my sister's house and checked and they didn't find anything there. She told them that I was running a simple grocery store and we didn't have anything. Then they came to my house and made a huge mess. They searched everywhere. They asked me to come to the police station to give a statement. I volunteered to go and give the statement since I did nothing wrong. They brought me to take a statement but they put 9g and 500mg. They had a red box like this. They had long boxes that looked like cigar boxes (*suruttu petti*) and they took stuff out of it and weighed them on the table. I

⁷⁹⁶ For a detailed discussion on allegations against the police, please refer chapter Arrest and Detention

told them they would have to pay for this injustice and that I would go to prison for their entertainment but they would have to pay for it one day. There are many like me here who were wrongfully charged by Wellawatta Police."

In many instances the women were the primary care givers of young children and expressed anguish about the impact of their imprisonment on their children. "I heard two policemen discussing whether to put 200mg or 2g, I cried a lot. I told them my child was sitting for the scholarship examination and not to do this to me as I am without a husband," lamented an inmate from NRP. Children without caregivers might themselves be forced to resort to criminality to survive, thereby perpetuating a cycle of crime and violence.

Women who were previously charged with drug offences stated they were arrested again, reportedly without any reason to suspect their continued involvement because law enforcement authorities seemingly hold the assumption that such women cannot be presumed innocent owing to their history of drug dealing. One inmate from GRP who was previously imprisoned for drugs stated, "After I was released, I started to sew and bought a sewing machine. I earned a living by selling pillow cases and door-mats during the last three months. Then, the police came and said that, it was not this police station that filed a case against you last time, so now we will file a case".

3. Treatment and conditions

3.1. Sanitation facilities

The state of sanitary facilities in prison would disproportionately impact women. For instance, the lack of privacy and reduced access to water would pose significant hardships for menstruating and pregnant and breastfeeding women. However, the Commission found that women did not often highlight concerns associated with inadequate sanitation conditions because female sections were not found to be as overcrowded as male sections and hence, the distribution of resources and facilities was among a smaller group of prisoners.

Access to menstrual hygiene management

The SMRs attribute the provision of toiletries as necessary to enable prisoners to maintain their cleanliness and hygiene.⁷⁹⁷ The Bangkok Rules directly address the requirement to meet the needs of female prisoners for hygiene and sanitary products⁷⁹⁸ stating that sanitary towels should be provided free of charge⁷⁹⁹.

In the study sample, of the total female respondents 62% stated they had not received sanitary napkins from the prison in which they were housed. The Commission observed

⁷⁹⁷ SMR 2015, r 18(1)

⁷⁹⁸ The Bangkok Rules 2010, r 5

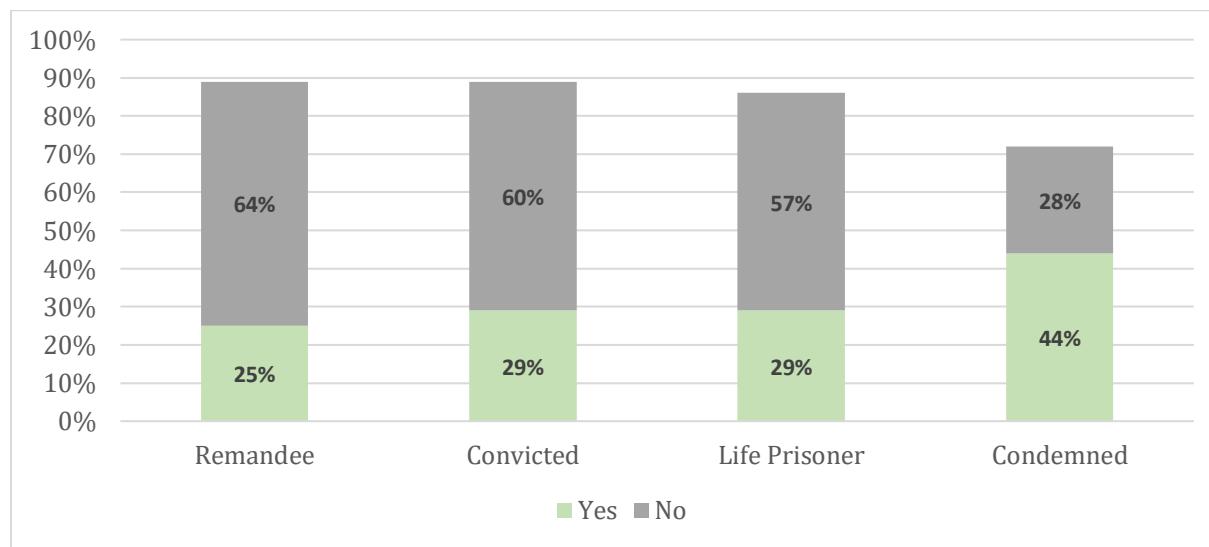
⁷⁹⁹ ibid

during the study that the DOP has no allocations to provide the female population with sanitary napkins, which was confirmed by SPs across prisons. Instead, an NGO or an international organization, such as ICRC, would either make a donation of sanitary napkins to the prison or would give to individual prisoners. As WCP SSP, T. I. Uduwara stated:

“There is no money given to the Department to buy sanitary pads for women. Sometimes an NGO or ICRC come and give women one or two packets. Sometimes they give it directly to the women, sometimes they make a stock donation to the prison, and the welfare office tries to give it to the women who don’t receive it from visits, only when they need it. So that’s it. If they don’t get it from a visit or don’t receive from a donation, there is nothing we can do.”

SSP Uduwara further stated, “I’m hoping someone will make a big donation for the upcoming Women’s Day”.

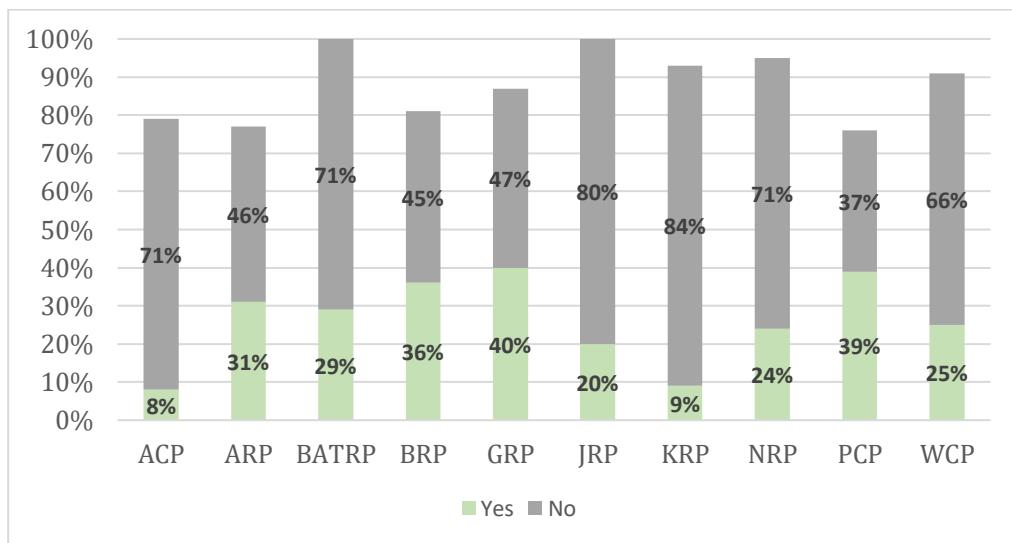
Graph 23.3 – Female respondents across prisoner categories on whether they have received sanitary napkins from the prison at which they were housed



The data is indicative of the fact that long term prisoners i.e. life prisoners (29%) and condemned prisoners (44%), are likely to receive comparatively more provisions for sanitation from prison authorities, including sanitary napkins. Even though long term prisoners, such as life prisoners and condemned prisoners, are expected to be provided with the basic sanitation provisions, it should be noted that the DOP does not have any budgetary allocations for women’s hygiene products, and hence if these products are provided to inmates it is solely via private donations or donations by other non-state entities such as NGOs or ICRC. When such items are donated to the prison, the primary recipients of these distributions would be inmates who receive fewer family visits and find it difficult to source their own sanitary items, namely long-term convicted inmates who receive fewer family visits compared to remandees who can receive visits every day. This was also confirmed by the Commission’s observations and the narratives of inmates. Additionally, it must be noted

that the DOP is not expected to provide any provisions for remandees, as discussed in the chapter on Accommodation, as remandees are expected to source provisions through visits.⁸⁰⁰

Graph 23.4 – Female respondents across prisons on whether they have received sanitary napkins from the prison at which they were housed



The quantitative data was confirmed through interviews, with remandee and convicted women from JRP, ARP, KRP, WCP ACP, PCP, ACP and PCP affirming that they were not regularly provided sanitary napkins by the prison administration. Where they have received sanitary pads, it was only distributed in small quantities to commemorate special occasions, such as the International Women's Day, New Year and Christmas. In one such instance observed by the Commission, at an event held at the female section in KRP, organised by the Commissioner of Prisons for Welfare, Mr. Chandana Ekanayake, each female inmate was provided one packet sanitary napkins.

Female inmates who have received sanitary napkins from prisons, such as those at NRP, ARP and GRP, remarked that they were given such items when requested, as they had no other means of receiving sanitary napkins. Examples of kamara parties distributing sanitary napkins they received from the administration were reported, for instance, at ARP. A majority of inmates, however, relied on their families, charity organizations and well-wishers to acquire such items.

Women who did not receive family visits mostly relied on inmates who enjoyed frequent visits from their families. This was the case for most foreign inmates from NRP, WCP and ACP who performed tasks for the local women (i.e. clean toilets, wash clothes and dishes) for which they were given sanitary products and other items in return. As a foreign national remandee at NRP said:

⁸⁰⁰ For a detailed discussion on visits, please refer chapter Contact with the Outside World.

"The prison does not provide anything for us. The way we survive here is... to get the soaps, shampoo and napkins, we work... like I work for some Sri Lankan people. If it's their turn for washing, I work for them in return for something, like soap, sugar, you know. If it's their day to clean the ward, I work instead of them. I work for them, then they give me what they have, they give me like soap. This is how we survive".

WCP currently holds the largest population of female remandees, and until June-July 2018, also housed the largest number of convicted and condemned women. However, all convicted, life and condemned women were transferred to ACP from WCP, en masse, in July 2018, following the decision of the MOJ in early 2018 to transfer all convicted women including women on appeal. It must be noted that even convicted, life, and condemned women on appeal were sent to ACP. The transfer has adversely impacted the ability of women to access sanitary products. For instance, women at ACP stated they would receive more family visits in WCP than in ACP, since ACP is not in an area that is easily accessible, and therefore they are no longer able to enjoy access to provisions through their families due to the inability of families to frequently visit the prison. Convicted foreign women who were transferred to ACP from WCP complained that at WCP they were able to source provisions and sanitary napkins in return for carrying out chores for remandee women, but are no longer able to do so as there were no remandee women at ACP.

Disposal of sanitary napkins

The most common methods of disposing used sanitary napkins included using paper bags to wrap them and then dumping them into dustbins, burying it underground or dumping it into the same dump as organic waste. The lack of an efficient mechanism to manage such waste was evident, as manifest in several accounts of inmates. Incidents of crows pecking at the trash, which adversely affected the overall cleanliness of the environment, were reported from NRP. Inmates from WCP recounted that they were to dispose such items into a barrel and when it was not cleaned regularly, they had to bury them in the ground along with baby diapers. The impact of the lack of an efficient waste disposal system, both environmental as well as on the cleanliness of the environment, has to be borne by the inmates. An inmate from NRP described it thus:

"Today, a similar incident happened and as punishment we had to touch the napkin with our hands. Since you came, they let us go, otherwise they would have made us to touch it. What can we do madam? They have to give a separate container to put the napkin or at least we must dig a hole to put the napkins, but they are not doing anything. What is the point of scolding us? This is something all women have to deal with."

The Chief Rehabilitation Officer at DOP informed the Commission that there are efforts to provide for regular provisions of sanitary napkins and disposal units at least in WCP, with the help of NGOs.

3.2. Access to healthcare

The SMRs require prisoners to be able to enjoy the same standards of healthcare that is available in the community.⁸⁰¹ The Bangkok Rules state that female prisoners are to be examined by female medical personnel upon request unless it is a situation that requires urgent medical intervention.⁸⁰² Where female prisoners are examined by a male MO contrary to their wishes, a female officer has to be present.⁸⁰³ The SRs require female prisoners to be treated by female medical personnel.⁸⁰⁴

The Bangkok Rules further provide for a range of healthcare services to be made available for the benefit of female prisoners. Where mental health and suicide prevention are concerned, programmes have to be devised and implemented so as to provide them with appropriate support.⁸⁰⁵ Substance abuse treatment programmes should, similarly, be designed and implemented for the utility of women, including those of pregnant women and women with children.⁸⁰⁶ Preventive healthcare should equally be a priority whereby female prisoners are educated on HIV/AIDS, STDs and other blood borne diseases whilst being given the opportunities to go through screening tests to identify breast and gynaecological cancer.⁸⁰⁷

Problems with access

The Commission was informed of a number of difficulties faced by women when accessing healthcare, primarily related to delayed access.

As stated in the chapter on Access to Medical Treatment, MOs reportedly inquire about their patients' offences more than their symptoms⁸⁰⁸, which led to many women becoming disinclined to access medical treatment, to avoid being subject to such questioning. As an inmate from NRP remarked:

A: "I don't want to go to PH, they are always there to judge you. You know they will say 'that is very bad' and 'how could you' and 'you are ruining our Sri Lanka' and 'you will be here for ten to twenty years'.

Q: Who said this?

⁸⁰¹ SMR 2015, r 24(1)

⁸⁰² The Bangkok Rules 2010, r 10(2)

⁸⁰³ ibid

⁸⁰⁴ SRs 1956, s 184 - In every prison where there is a hospital or room set apart exclusively for the reception of female prisoners when sick, the attendants in such hospital shall be women only and no male subordinate officer shall be allowed to enter the hospital unless ordered to do so by the Medical Officer.

⁸⁰⁵ The Bangkok Rules 2010, rr 12, 16

⁸⁰⁶ ibid r 15

⁸⁰⁷ ibid rr 14, 17, 18

⁸⁰⁸ For a detailed discussion on complaints received against prison doctors, please refer chapter Access to Medical Treatment.

A: The doctors tell us this.

Q: In the PH?

A: Yeah, so how do you want me to go to them and say I'm having a headache or I'm having something else? It's difficult because they judge you."

Another challenge to easy access of health care is due to the women's section most often being in a compound separate to the men's section and would not have a separate medical facility. It was observed that in all the prisons, except at WCP and ACP, there was no separate PH for women within their respective compounds. During the first visit of the Commission to ACP the facility in the women's section was found to be not functioning even though it had all the infrastructural facilities required. However, during a follow up visit to ACP the Commission observed that the PH in the female section was operational, following the mass transfer of convicted women from WCP to ACP.

The female guards in prisons cited reasons, such as the lack of officers and the fact the key to the main gate was kept at the men's section, which led to delays in an officer coming from the other side to open it if there was an emergency, as reasons for the delay in summoning medical attention or transferring sick inmates. It is only in very rare and special cases that inmates would be taken to a hospital the same night. As an inmate from ARP stated:

"She had high fever and it became serious. She was taken for treatment around 11 am or noon next day after she had fever for two days. They can't take anyone to the other side unless it's the time the doctor comes."

Female interviewees stated that doctors would visit the female section at least once a week and at most, every day. Some doctors would make prior inquiries if there were any female patients, and if so, they would visit the female section to provide treatment.

Infrastructure issues

The Commission observed the lack of quarantined spaces in the female sections of the prisons visited where women can be kept when they are infected with contagious diseases. In almost all cases, infected prisoners remained in their wards along with the other prisoners.

The lack of required and competent health care staff

Complaints were received from KRP, GRP, ACP and BRP about the lack of competence of dispensers, alleging that the dispenser who gave them medicine daily was not equipped to treat them when they were ill, resulting in prisoners receiving the wrong medicine in many cases. As one woman from ACP stated:

"But there is another problem here. Maybe the doctor sends the proper medicine, but the ones who give them to us are mistaken. There is a patient with tuberculosis, I once received her tablet."

Likewise, if they were to fall ill at night or on a day that the doctor didn't visit the prison, the female jailers provided temporary relief, such as Panadol, Piriton, Digene and pain killers to relieve them of their discomfort.

Women often did not have the choice to be examined by female doctors due to the limited number of in-house MOs in prisons. The Commission also found that the number of female nurses in prison is inadequate, which is a shortcoming found in the entire prison healthcare system.⁸⁰⁹ This was also highlighted by the MOIC at WCP, who stated:

"We are in need of female nurses since we have a female hospital ward in the female section and we don't have any female nurses at present. We have male nurses only. That is actually an issue. What we do is we prescribe the medicine but who is going to monitor afterwards? We don't know what happens to the patient after that - whether the patient took medicine properly or not. We sometimes prescribe intravenous antibiotics but they don't know how to take them properly. Specially in the female ward, it is better if we have female nurses."

The deficiency of female medical personnel may discourage female prisoners from seeking medical attention for certain symptoms they feel uncomfortable discussing with a male doctor.

Mental health care

The Commission observed the lack of mental healthcare in the prison system had an adverse impact on women, many of whom were struggling to cope with separation from their children, which affected their daily functioning. The Commission also came across women who were subject to physical abuse by their partners, which was often cited as the reason for committing the crime; these women were not receiving any counselling or psychiatric services during incarceration.

In the study, 55% of female respondents stated they were depressed and that feelings of anxiety and sadness interferes with their daily functioning. In addition, 7% of female respondents said they have attempted to self-harm while in prison while 4% said they have attempted suicide.

⁸⁰⁹ For a detailed discussion on the lack of female medical personnel in prison, please refer chapter Access to Medical Treatment.

Preventive health care services

The Commission observed that in most prisons, preventive health care largely consisted of awareness programmes on the prevention of STDs and HIV/AIDS. STD mobile clinics and HIV/AIDS trainings were generally made available to the inmates with the help of external state entities/parties. As stated at the beginning of this chapter, of all the women surveyed, most were charged with drug related or solicitation charges. While a number of prisons, including GRP, BRP, BATRP and WCP conduct periodic STD screening clinics for male and female prisoners, substance abuse programmes were not observed in any prison.⁸¹⁰

Similar efforts at preventive care have do not exist for the early detection of breast and cervical cancer in incarcerated women, despite the worldwide rise in its prevalence and the increase in the number of deaths occurring as a result.

3.3. Ante-natal and post-natal care

The SMRs require specific accommodation for prenatal and postnatal care to be made available inside women's prisons.⁸¹¹ In the event a female prisoner is due to give birth, arrangements should be made to permit her to deliver the baby at a hospital outside the prison.⁸¹² If a child is born in prison, this fact shall not be mentioned in the birth certificate.⁸¹³ Where children are allowed to stay with their mother, the SMRs specify that internal and external childcare facilities should be made available.⁸¹⁴ This extends to children being given due healthcare facilities by having staff qualified to attend to their needs.⁸¹⁵

Ante-natal care

The Commission observed the lack of ante-natal facilities for pregnant women inside prisons. According to the MOs of ARP, PH, KRP and PCP, pregnant women were taken to general hospitals to compensate for the lack of facilities inside prison. Female inmates from WCP are taken to De Soyza Maternity Hospital, inmates from KRP to Ratnapura Hospital, inmates from ARP to Anuradhapura Teaching Hospital and inmates from PCP to the Kandy Hospital. Particularly in KRP, the MO stated that women were taken to the hospital for childbirth close to their delivery dates.

Some women complained of the lack of ante-natal care, such as an interviewee from WCP who alleged that she was neither taken to the clinic on time nor given vitamins. A different narrative was presented by an inmate, the only pregnant woman at BRP at the time the Commission visited, who mentioned that she was taken regularly to the clinic at an external

⁸¹⁰ For a detailed discussion on drug rehabilitation in prison, please refer chapter Rehabilitation of Prisoners.

⁸¹¹ SMR 2015, r 28

⁸¹² ibid

⁸¹³ ibid

⁸¹⁴ ibid r 29(1)(a)

⁸¹⁵ ibid r 29(1)(b)

hospital in the prison bus accompanied by a female officer. She further stated that she was given vitamins and that blood tests were regularly done as part of care provided prior to childbirth.

A life prisoner at PCP, who was sentenced for a drug related offence instead of being sentenced to death because she was four months pregnant at the time her sentence was pronounced, stated to the Commission that she was provided satisfactory prenatal and postnatal care by the prison officers. She stated that she was provided with a mattress, her clinic dates were not missed, she was given vitamins prescribed by the prenatal clinic and was allowed to keep a cradle that her family sent her. The Commission observed that the child was being taken to children's clinic in the Kandy Hospital, for regular growth monitoring and vaccinations.

The diet that was generally given to the pregnant women did not differ from that which was given to the other inmates as pointed out by the pregnant inmates interviewed during this study.

Post-natal care

The Bangkok Rules stipulate that pregnant women after their delivery should be provided with advice on their health and diet by a qualified practitioner and to that end, be provided with adequate and timely meals, free – of – charge.⁸¹⁶ The Rules further state that children living with their mothers in prison should be provided adequate healthcare, and that their development should be monitored by specialists.⁸¹⁷ Moreover the Rules calls for the environment which children inhabit to be as close as possible to that of a child growing outside the prison.⁸¹⁸

Post - natal facilities observed in prison did not sufficiently provide mothers and their children a safe and comfortable environment. For instance, an inmate from BRP, who was allegedly implicated in the murder of her own child immediately after she gave birth, said she had no access to counselling sessions to deal with postpartum depression. She was further experiencing postpartum bleeding and, as the Commission observed, was in an ailing state, both mentally and physically. Similar narratives were mentioned at WCP, such as a foreign inmate not receiving proper postnatal treatment after the loss of her child while in prison. Her condition too was far from satisfactory since she developed fibroids owing to the incident and was also diagnosed with cervical cancer. Mothers who were breastfeeding their children were not provided with a special diet to meet their increased nutritional needs during this time.

⁸¹⁶ The Bangkok Rules 2010, r 48(1)

⁸¹⁷ ibid r 51(1)

⁸¹⁸ ibid r 51(2)

3.4. Gender specific searches

The SMRs require body searches to be conducted respectfully by trained staff of the same sex as the prisoner, and intrusive body cavity searches to be carried out, only if necessary, by qualified medical professionals.⁸¹⁹ The Bangkok Rules further stipulate that searches be conducted in a manner whereby the dignity of female prisoners is ensured.⁸²⁰ Where such searches are conducted, it should be conducted by staff trained in this regard in accordance with established procedures. However, prison administration should look towards implementing alternative screening procedures inside.⁸²¹

Examples of numerous inmates having had to suffer degrading and inhuman treatment while being searched in an intrusive manner by officers were narrated to the Commission. Searches are conducted when female prisoners leave the prison to attend Court hearings or return to the prison from Court to prevent the entry of contraband into prison. Inmates stated that during these searches they are asked to remove all their clothing when being searched by prison officers. As an inmate from KRP said:

“They take us out after we have dressed. In the morning, we wash our faces inside or from wherever water is available, and they take us outside after we dress. After they finish, we come back here, they undress us and check us...they undress us completely.”

Officers have allegedly carried out intrusive searches of body cavities, often causing the inmates to suffer resultant pain for days, if not weeks. An inmate from WCP recounted the experience thus:

“They take off my dress and search on my way back. They lower my bra and check. They even take off the panty and ask to bend and spread the vagina and they check using their hand. Then it even hurts to pee sometimes. They also flash the torch and check.”

3.5. Access to places of worship

The Commission noted that while places of worship and religious services are constructed and arranged for different faiths in the male section, female prisoners were not provided access to places of religious worship in almost all prisons the Commission visited. Women's sections would contain spaces for religious worship of only one or two faiths, as evident in NRP where there was only a church and a Buddhist shrine. Similarly, GRP had only a Buddhist shrine room inside the female section and WCP female section contained a Bo tree along with a Buddha shrine, which the inmates could use for religious worship. The

⁸¹⁹ SMR 2015, r 50

⁸²⁰ The Bangkok Rules 2010, r 19

⁸²¹ ibid r 20

Commission did not observe separate facilities provided for Hindu, Christian and Muslim inmates to worship.

Where spaces for religious worship were not available, women would manage by keeping statues in their wards or in their possession or using the space available in their ward. Inmates possessing statues of Lord Buddha could be seen in ACP, while at BATRP inmates had a small shrine which displayed all religious symbols in their ward. Women who had to pray inside their own wards or spaces shared with other inmates often faced difficulties, as stated by an inmate from NRP, "We have to pray here. If we tell other inmates to move a bit so that I can pray they get angry". Muslim female inmates complained about this in particular, as they are required to pray in the middle of the night, and sometimes do not do so for fear of disturbing the other women in the ward which might lead to conflict. It was also felt that as prayer requires serenity and privacy, worshipping in a room full of inmates over a cacophony of voices that also included a blaring television, did not always satisfy their religious and spiritual needs.

While officers in almost all prisons the Commission visited stated that various religious programmes are held in prison for the benefit of prisoners, female prisoners found it difficult to access those programmes since the religious instructors mostly visited the men's section. The Commission observed female prisoners being taken to the men's section for a spiritual programme in GRP, but not in other prisons. As narrated by inmates from BATRP, only Christians were taken to the Church that was located inside the men's section while the Hindu women did not receive the opportunity to go to the Kovil that was located near the main entrance.

3.6. Access to education, vocational training and work

The SMRs recognize the importance of nurturing the will in detainees to help them lead responsible lives upon their release from prison⁸²² through the use of a range of rehabilitation programmes. The Bangkok Rules more specifically require a balanced programme of activities to be provided for women.⁸²³ Such programmes must be flexible enough to respond to the needs of pregnant women and women with children.⁸²⁴ Childcare facilities and arrangements must be made available to this end to enable such women to participate in these activities.⁸²⁵

The Commission observed that female prisoners did not have access to an array of activities unlike men, but were limited to taking part in activities that were gender stereotyped.

⁸²² SMR 2015, r 91

⁸²³ The Bangkok Rules 2010, r 42(1)

⁸²⁴ ibid r 42(2)

⁸²⁵ ibid

Educational opportunities

There are limited educational opportunities available to women inside prisons. The Rehabilitation Officer of the WCP Female Section stated that inmates had the opportunity to take part in '*Dhamma*' school on Sundays and English classes. Interviewees from ARP mentioned they had the opportunity to attend English classes. Female inmates, irrespective of their detention status, had the opportunity to benefit from such programmes. Other programmes aimed at improving literacy, apart from vocational training activities, were not observed. The measures currently in place are insufficient and not viable in the long term.

Vocational training

Similar to the state of vocational training programmes for men, the Commission noted the technical and logistical constraints encountered by women when accessing the limited number of vocational activities. The lack of adequate supplies or the supplies required for learning being unfit for use was a hindrance, manifest particularly at BRP where the sewing machine had been in a state of disrepair for more than a month. A similar situation was recounted to the Commission by inmates at ACP, one of whom said, "There are small pieces of cloth and [that is] not even sufficient to stitch a teddy bear. We don't have threads and even needles are broken. Since there are insufficient supplies no one is really interested."

Work

The Commission observed female prisoners being restricted to a limited number of opportunities to be involved in party work during their incarceration. Remandee women were mostly required to keep their immediate environment clean. As inmates from PCP, KRP and BATRP stated, cleaning activities included washing dirty bowls, washing the drains, cleaning the water tanks, mowing the grass and carrying food. Inmates at ARP stated they had to wash the uniforms of the officers and iron them.

Convicted women had the opportunity to be part of the weaving party as told to the Commission by the inmates from PCP or the office party as evident in ACP. The weaving party at PCP was the only meaningful party work that was available to women prisoners across the prison system, as observed by the Commission. A weaving party was in operation at WCP before it was closed down when the majority of convicted women were shifted to ACP in July 2018. Women were also not observed being sent for out-party work. Though there are no provisions in the DSO, PO or the SRs restricting women from engaging in out-party work, the practice of only sending men for out-party work has resulted in women being excluded from the benefits of such work.

Remandee women from BRP, GRP, ACP and ARP stated that they had the opportunity to engage in sewing and stitching clothes, while convicted women, too said they were able to be involved in only sewing, painting and making handicrafts at NRP, KRP, ARP, JRP and ACP. At JRP inmates used palmyrah leaves to make products, which appeared to be more of a vocational training course rather than work party. Interviewees stated that although external instructors were brought to teach them in the relevant fields of activity these

persons would visit the prison once or twice a week at most.⁸²⁶ The activities help prisoners while away the time in prison and cope with the conditions of incarceration better, as evident in this remark made by an inmate from JRP, “Because I can’t sit and just wait, due to my mental state since I remember my home. So, it is better to engage in something rather than suffer from pain and pressures of those”.⁸²⁷

However, the usefulness of such activities given their limited scope, particularly their ability to enable women to access meaningful employment opportunities when released, is questionable. When inmates are not provided the opportunity to acquire or improve skills during imprisonment, it increases the possibility of recidivism as they may resort to committing crimes for survival upon release. This is especially necessary considering the large number of women charged with drug-related offences who testified to engaging in the unlawful trade because they had no other means to earn a living.

The positions of Special Duty prisoners and Discipline Prison Orderlies are not available to women, unlike their male counterparts, placing them in a disadvantageous position when produced before the License Board, as they cannot present evidence of rehabilitative conduct or leadership positions they may have earned.⁸²⁸ The need for expanding prison work and promoting inclusivity without any discrimination on the grounds of sex is important for the effective reintegration of female prisoners into society.

4. Children in prison

When young children are held in prison with their mothers, the wellbeing of the child in prison also impacts on the well-being of the mother. The living conditions in detention facilities which house children must be conducive to their physical development and emotional wellbeing.

The CRC vests the duty in all institutions, services and facilities responsible for the care of children to conform to the standards established by competent authorities keeping the best interests of the child at the forefront at all times.⁸²⁹ SMR 29 states that children in prison with a parent must never be treated as prisoners.

Keeping children with mothers in prison

The Bangkok Rules state that decisions allowing children to stay with their mother or to be separated from the mother are to be taken in the best interests of the child.⁸³⁰ The removal of the child has to be undertaken with sensitivity and only when alternative care

⁸²⁶ For a detailed discussion on the vocational training available in prison, please refer chapter Rehabilitation of Prisoners.

⁸²⁷ For quantitative data on vocational/skills, education, prison work in which women participate, please refer chapter Prison Work.

⁸²⁸ For a detailed discussion on the License Board process which allows prisoners to be released early on license, subject to certain conditions, please refer chapter Early Release Measures.

⁸²⁹ Convention on the Rights of the Child, 1989, art 3(3)

⁸³⁰ The Bangkok Rules 2010, rr 49, 52(1)

arrangements for the child have been identified.⁸³¹ A similar view is adopted by the CRC, which states that decisions affecting the future of a child should be taken in his/her best interests.⁸³²

The SRs state that children are not to be permitted to stay with their mothers unless the child is at the breast.⁸³³ The decision that such children are fit to be separated is to be eventually made by the MO⁸³⁴ and the prison authorities must then assess whether arrangements for the maintenance of those children can be made⁸³⁵. Where mothers are accompanied by children who may not be at breast, the SRs state that they must be taken to the nearest police station.⁸³⁶ The child's separation from the mother this way can have a traumatizing impact on the child's life in the long term. In practice, the Commission observed that children are allowed to remain with their mothers until the age of five after which they will be sent to be cared by a family member, or to a state-run child care facility if there are no family members willing to take care of the child. The Commission believes that this practice of the DOP is commendable because the best interests of the mother and child are prioritized. Further, the policy could be strengthened by ensuring that the decision to separate a mother and child is made on an individual, case-by-case basis, considering all relevant factors, including *inter alia* whether the child has an alternate caregiver, whether s/he will be placed in a state-sponsored children's home, the duration of the mother's sentence, etc. Therefore, the decision should be made by balancing the particular elements of the case with the need to ensure a minimal amount of time is spent by the child in prison, rather than mandatory separation of children under five from their mothers.

Complementing the stance adopted by the SMRs, the DOP Circular No. 05/2011 prohibits the details of the prison being mentioned in the registration of the births of children born in prison. Instead, the circular requires the area where the prison is situated, as opposed to the name of the prison itself, to be included as the place of birth.

Child care facilities

The Commission noticed that childcare facilities could be drastically improved, to make the environment more conducive to their physical and mental development. The X Ward in WCP, which housed fifteen mothers, twelve toddlers and three infants at the time of the Commission's visit in August 2018 was plagued by two rats and contained no separate bucket or tub to bathe the children and the mothers stated they had no proper means to dispose used diapers. There was also a shortage of mosquito nets available for children in the ward. The lack of nurseries and play areas in all prisons, except in WCP and ACP, was also noted. The Nursery Ward at WCP was recently renovated with funds from Hemas Outreach Foundation, the CSR arm of Hemas Holdings PLC. The pre-school building in ACP however was not in operation at the time of the Commission's visit to ACP, even though

⁸³¹ ibid r 52(2)

⁸³² The Convention on the Rights of the Child 1989, art 3

⁸³³ SRs 1967, s 165

⁸³⁴ ibid r 166

⁸³⁵ ibid

⁸³⁶ ibid

inmates were sent to clean the premises regularly, as there were no children under five being held at the prison. Further, the DOP has no budgetary allocation to buy provisions for the children. For instance, the SP of KRP stated that often it is prison officers who buy the necessary items for children, and he requests officers to bring toys and clothes from their homes for the children of prisoners.

According to the SRs, in instances children are kept with their incarcerated mothers they are to be provided with a diet as recommended by the MO and approved by the SP.⁸³⁷ The Commission found that children most often had to rely on the food that was given to adults instead of being provided with a special diet. Stories of children being forced to consume food that was not well prepared were heard from almost all prisons the Commission visited. "Carrots and potatoes are given without boiling them. How can I give that to my son to eat?" were the words of one inmate from PCP. The mothers however receive hot water and milk powder from the prison, as stated by the pregnant inmate from BRP who also had a child with her in prison. The mothers at WCP received rusk and a milk packet to be given to their kids from the Escort Branch when they attend courts, which was affirmed by the Nursery teacher. Inmates have, nevertheless, experienced difficulties in relation to obtaining these facilities as described by an inmate from PCP:

"Yesterday when I asked for some hot water to make noodles there was a huge fight. [They] scolded saying that there is no law to give hot water to make noodles. They said if [I'm] making, to make for all three children. I made the little that I had. They said if [I'm] making, then to make for all three kids. What I made was also noodles given to me by another person."

The mothers at WCP stated that the hot water provided in one 2.5 litre flask twice a day was not sufficient for their children. The mothers further requested the cream biscuits that were earlier provided to the children to be given again since the children loved them. Female inmates suggested that there should be a special diet for children who are in prison with their mothers and that there should be at least one curry with every meal that is suitable for consumption by children.

The services of paediatricians were not available inside almost all prisons the Commission visited. The children kept with their mothers were not taken for regular check-ups and were taken to see the doctor only when they fell sick. All inmates with children in WCP informed the Commission that they had to beg the guards to take their children to the doctor if they fell ill at night. Even then they said the sick would be taken only after a few hours. An inmate in WCP illustrated this saying:

"They shout at us saying, "Why can't you come early?" Then we say, "Just now they opened the door." Again, they asked, "Why couldn't you come yesterday?" We replied to that, "Children don't fall sick with prior notice.""

⁸³⁷ ibid r 222(9)

The pre-school teacher who is attached to the Serve Foundation visits the prison every day except weekends and public holidays. She has twenty-five years of experience and possesses a Library Science degree and Associated Montessori qualification. She has further been trained as a counsellor. When the Commission inquired about the nature of the curriculum from her, she stated that there was no fixed curriculum and that she currently incorporates sensorial, geometrical and botanical activities (equipment and tools used for these activities, such as letters cut from sand papers were noticeable) and taught Sinhala language, Mathematics, drawing and singing. Although the Nursery at WCP is for children aged two and a half years and above the Commission was told by the pre-school teacher that even the younger ones would come near the door and that she then allows them inside and gives them toys, which the Commission noticed.

However, these arrangements were only made for the children at the WCP. The child of the pregnant inmate from BRP for instance had access to none of these facilities. Except for a small cell with few mattresses arranged as a makeshift bed and a mosquito net, the child neither had the benefit of using a play area nor access to a toilet with running water in the cell the mothers with children were usually allowed to stay. The lack of facilities may cause children in prison to fall behind in their growth and learning, compared to other children their age. Since the physical and mental development of young children requires constant stimulation and educational activity, the lack of these facilities in prison would have a long-term adverse impact on children's wellbeing.

5. Staff

The SMRs provide for a responsible woman staff member to have authority over the part of the prison set aside for women if it houses both men and women.⁸³⁸ No male staff member can enter this part of the prison unless accompanied by a female staff member.⁸³⁹ Women prisoners are to be attended and supervised by female staff members only⁸⁴⁰ but this does not prevent male staff members i.e. doctors from carrying out the duties assigned to them⁸⁴¹.

The Bangkok Rules permit women prison staff to have equal access to training as male staff.⁸⁴² They are to further receive training on gender sensitivity and prohibition of discrimination and sexual harassment.⁸⁴³ However, the scope of training is broad in that they are also required to have knowledge of human rights of women prisoners, issues relating to women's health, healthcare of children,⁸⁴⁴ mental health care needs⁸⁴⁵ and HIV prevention, treatment, care and support⁸⁴⁶.

⁸³⁸ SMR 2015, r 81(1)

⁸³⁹ ibid r 81(2)

⁸⁴⁰ ibid, r 81(3)

⁸⁴¹ ibid

⁸⁴² The Bangkok Rules 2010, r 32

⁸⁴³ ibid

⁸⁴⁴ ibid, r 33

⁸⁴⁵ ibid, r 35

⁸⁴⁶ ibid, r 34

The SRs, to this effect, stipulate that a matron and such female officers as necessary should be assigned to every prison in which women are confined⁸⁴⁷, and they are expected to perform the same duties as the jailor and officers of the men's prison under the supervision of the jailor. The jailor accompanied by the matron is expected to visit the women's prison at least once a day.⁸⁴⁸ No other male officer shall be allowed to enter the women's prison unless summoned by the jailor or the matron.⁸⁴⁹ A variety of duties are to be carried out by the matron and the respective female prison staff, which have been duly described in the DSO⁸⁵⁰ and the PO.⁸⁵¹ The presence of 'at least one female officer is required in every prison where female prisoners are detained'.⁸⁵²

The Commission was informed that there is a shortage of female staff in almost all prisons the Commission visited, particularly at BRP, GRP, JRP and BATRP. The female officer from BRP stated there would often be no free officers within the premises to accompany a sick inmate to the hospital. The officer from JRP recounted they had to do double shifts owing to the lack of staff. A similar scenario was narrated by the officer at BATRP whose transfer had not yet been approved due to the prison being short-staffed.⁸⁵³

Officers at all prisons told the Commission that training was required to enable them to perform their duties efficiently. The female officers for instance stated that they had only received induction training in relation to weapons management, and had not received in-service weapons training thereafter. The need for officers to acquire knowledge of issues and laws that directly affect women were reiterated by many officers. The officer from BATRP stated she learnt from experience what was needed for the performance of her duties, because she did not receive that sort of knowledge when she began working.

Commissioner of Prisons – Administration and Intelligence at the time, Mr. Thushara Upuldeniya's remark expressed it best as he said, "Just because you have female guards to handle female inmates does not mean they know what to do especially when female inmates with children come into prison."

6. General observations

The Commission observed that the majority of women in prison have been incarcerated for drug-related offences, of which a clear proportion seem to be victims of adverse social circumstances. Their incarceration is, thus, linked to wider socio-economic elements which often require policy solutions, such as rehabilitation for substance abuse and comprehensive career options and skills training to enable the women to provide for themselves and for their families.

⁸⁴⁷ SRs 1965, s 182

⁸⁴⁸ ibid

⁸⁴⁹ ibid

⁸⁵⁰ DSO 1956, ss 107-120

⁸⁵¹ PO No.16 of 1877, s 32

⁸⁵² ibid, s 7(3)

⁸⁵³ For a detailed discussion on issues of staff shortages, please refer chapter Challenges Faced by the Prison Administration.

With regards to their treatment and conditions in prison, women are subject to body searches, which are not carried out in accordance with international guidelines and could therefore amount to degrading and inhuman treatment.

A collective concern of women from all prisons is the lack of proper and consistent access to sanitary napkins as well as an effective disposal mechanism.

The state of healthcare in the prison falls far below the national standard of healthcare enjoyed by persons with liberty, and the standard of medical care for women prisoners is often lower. The primary reason for this is that prison hospitals are mainly situated inside the male section, with no separate arrangements made in the female section. Most female sections do not have psychiatric units and quarantined spaces. The facilities for prenatal and postnatal care, too, are at a bare minimum and the scope of preventive health care is limited and doesn't include breast and cervical cancer screening.

Unlike their male counterparts, women have limited access to vocational activities and prison work, and the available activities reinforce the traditional role of women. For instance, vocational training programmes in prison are limited to sewing and handicrafts, which seriously impedes the opportunity for upward social mobility for women after their release.

Women are allowed limited access to places of worship because the women's sections inside prisons consist of modest arrangements to facilitate religious worship.

Female sections in prisons are understaffed and administered by officers who themselves highlighted the lack of training to handle sensitive issues related to women and their children.

Although it is commendable that the DOP allows children under the age of five to remain with their mothers in prison, the development of the child must not be hindered by prison conditions. The Commission found that child care facilities with programmes aimed at improving the physical and mental well-being and educational level of children were insufficient to effectively cater to their holistic development. Thus, children born or kept in prison at a young age may suffer disadvantages later in life due to the obstructions to their mental and physical growth during crucial formative years.

24. Prisoners with Disabilities

"I have been on death row for fourteen years. When I go to the toilet it goes on my clothes, urine on my clothes. They (other prisoners) wash those clothes and bathe me. They put powder and eau de cologne and clean me everywhere. They lift me from the toilet. They lift me up from the toilet and bathe me, one by one. I can't sit in the commode, I fall. I don't have life from below here (indicates), below the spine."

Male Condemned Prisoner, WCP

1. Introduction

Persons with disabilities encounter a number of issues in prison, mainly regarding accessibility and access to medical care.

Article 4 of the United Nations Conventions on the Rights of Persons with Disabilities; requires State Parties to "ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability". However, persons with disabilities who are in prison are deprived of necessary medical care, support, services and accommodation. The difficulties that persons with disabilities face in society are "magnified in prisons, given the nature of the closed and restricted environment, overcrowding, lack of medical care and support among others".⁸⁵⁴ In such instances, prison conditions could exacerbate existing physical impairment or create a new one. For example, condemned prisoners at WCP and PCP were found to have some form of visual impairment because of restrictions on the duration they are allowed to spend outdoors, forcing them to stay in the dark the entire day. Additionally, disabilities can also be aggravated by coming into prison, such as a disabled inmate in WCP who stated that, due to the lack of facility to continue his Ayurveda treatment, he was forced amputate his leg in prison.

The Commission observed that elderly prisoners, who constitute 5% of the total population of prisoners⁸⁵⁵, also suffer difficulties similar to those experienced by persons with disabilities, i.e. accessing medical care for age-related medical conditions and associated mobility/accessibility issues. Due to the similarities in the hardships these two groups face during their sentence, the issues faced during incarceration by elderly prisoners will be addressed in this chapter where relevant. While the UN Principles for Older Persons⁸⁵⁶ contain general principles to be followed by Member States to ensure older citizens have equal access to, *inter alia*, healthcare, and work and recreation opportunities, it must be noted that neither the SMRs, nor any other international human rights instruments stipulate specific minimum standards for the treatment and conditions of elderly prisoners.

⁸⁵⁴ United Nations Office on Drugs and Crime, *Handbook on Prisoners with Special Needs*, (Criminal Justice Handbook Series, 2009), p 43.

⁸⁵⁵ DOP Statistics 2019, convicted prisoners aged sixty and above, page 27

⁸⁵⁶ United Nations Principles for Older Persons, adopted by General Assembly resolution 46/91 of 16 December 1991

2. Infrastructure and accessibility

SMR 5 requires prison administrations to ‘make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis’.

During prison visits, it was noted by the Commission that none of the prisons were equipped with facilities to provide even basic disability access. Since most prison complexes like WCP, CRP, KGRP and KRP are old and dilapidated structures it can be challenging to make substantive structural changes since they were not constructed bearing disability access in mind. However, it should be noted that even recently built prisons like PCP, ACP and JRP have not been designed to provide disability access as they have no wheel chair access or railings for use by prisoners with disabilities and elderly prisoners. It was also noted that most of the new prisons did not have wards on the ground floor for persons with disabilities to occupy. Specifically, PHs and wards in MCP and JRP were buildings that had to be accessed by stairways, as they did not have elevator access, and all inmates were required to use the stairways to enter their sleeping quarters. This was also found to be the case in KRP where the hospital beds for admission were on the first floor with no disability access.

Most prisons were found to have squatting toilets in the wards while some contained urinals, both of which cannot be used by inmates with amputated legs or those on crutches or elderly prisoners who struggle with worn joints and aching limbs. It was noted in most prisons that disabled inmates had to become accustomed to using the toilets despite their disability. The one instance the Commission came across a disabled inmate being held in a cell on the ground floor was in the punishment cell in Jaffna, due to the lack of other accommodation on the ground floor. However, this cell had no toilet facilities and he had to use tins and bottles to relieve himself. An inmate at NMRP remarked about the lack of disabled friendly bathrooms, stating, “There aren’t commodes. It’s on the ground. I have to use my hands”. A disabled prisoner in PCP requested that he be moved to the PH, because his current ward was crowded and it did not have the necessary bathroom facilities. Very few prisons had makeshift chairs to be used as commodes. A prisoner on life sentence at WCP expressed the difficulties he faced thus:

“I have a separate toilet made for me... Yes, like a chair. In a stool like this, a circle is cut in the middle for me to sit. I go to the toilet using that. I can’t use the toilet the normal way. I have to press my belly like this from the side to use the toilet. I can’t use the toilet in the normal way. When someone lifts me and keeps me on it I do it.”

Similarly, access to elderly or disabled-friendly bathing facilities are equally lacking in almost all prisons visited and the common bathing areas have no support structures. These areas were normally found to be very slippery without any railings to hold on for support, and did not have adequate space for everyone, since multiple prisoners tend to bathe at the same time, since water supply is provided only during certain times. As reported to the Commission, prisoners with disabilities bathed mostly with the help of other inmates in the ward. Where such help was not available, they have with much difficulty found ways to use facilities that were already available. As a life sentence prisoner at WCP described it:

"Someone carries me and brings me to the shower and bathes me. Bathing, soaping, after doing that work, someone lifts me and keeps me on the bicycle. With all that the inmates help me. In the previous birth I must have committed a great sin for this to happen, but to gain [the support of the] people I have done a greater good deed. I'm happy about that. That's what I'm happiest about."

Prisoners with disabilities would find themselves at a disadvantage when accessing various services in the prison, for example, prisoners with disabilities in WCP requested to be allocated one designated phone booth as they are unable to wait in line for many hours.

Generally, it was observed that fellow inmates help the disabled inmates in their day-to-day activities like bathing and fetching food, which was seen in WCP, JRP, PCP, BATRP and GRP.

3. Prosthetics and assistive equipment

Prisoners with disabilities also need access to equipment such as wheelchairs, canes and crutches that enable them to enjoy a normal life. However, there is very little support offered to disabled persons to obtain such assistive equipment. It was observed that these were usually provided by NGOs or individual families as the DOP does not have budgetary allocation for this purpose. The Commission received complaints from disabled inmates that their wheelchairs and prosthetics had to be replaced due to wear and tear. For example, an inmate at CRP requested that his prosthetic leg be replaced, a visually impaired inmate at WCP requested a white cane and inmates at WCP PH and PCP requested wheelchairs.

4. Medical care

Prisoners with disabilities may have specialized healthcare needs related to their disability. As stated by the former CGP Mr. Dhanasinghe, "Prison is not the place to handle people who are sick, disabled and dying. We are not trained for that". Aged prisoners would also have increased healthcare needs and would require frequent visits to the national hospitals and clinics for regular check-up and consistent treatment, which the prisons are not equipped to provide.⁸⁵⁷

In WCP there is a designated ward for old prisoners (G ward) which houses close to eight to ten prisoners who are partially paralyzed and need constant assistance from the other old persons in the ward. The inmates stated they were capable of helping the disabled inmates only to a certain extent since the rest of them are old and frail as well. This would also be problematic in a scenario where inmates need to be evacuated during an emergency or

⁸⁵⁷ For a detailed discussion on the hardships faced by the prisons to transfer prisoners to the hospitals for treatment, please refer to chapter Access to Medical Treatment.

natural disaster, since there are no able-bodied inmates to assist them.⁸⁵⁸ The inmates in G ward further stated, that they do not receive regular check-ups and are not taken to the GH or PH. They are only given generic medicines every day from the surgery inside the prison.

5. Participation in rehabilitative programmes

Disabled inmates are disadvantaged and are not given the opportunity to live a dignified life in comparison to the other inmates. It was observed that very few disabled inmates were employed in work parties and no disabled inmate held any position of responsibility, thereby preventing them from utilizing their time productively.

Many elderly prisoners were also observed spending their time in prison without being engaged in any meaningful or productive activity. Thus, if prisons cannot provide opportunities for elderly and disabled prisoners to be engaged in reformatory and rehabilitative programmes during their sentence, the purpose of incarceration cannot be realized. Furthermore, this not only affects the mental state of the prisoner but also detrimentally affects their prospects of obtaining Home Leave when presented before the License Board or commutation, as they cannot make a case for their rehabilitation in prison.

6. Medical board

The incarceration of disabled inmates is a huge financial burden to the prison system due to continued healthcare expenditure. Further, the expenditure does not result in substantial gains in public safety because people bearing advanced conditions of disability and impairment pose a low risk of re-offending, which was also highlighted by the then Secretary, MOJ. This is especially true in cases of permanently incapacitated prisoners. For example, one prisoner at WCP is completely paralyzed and does not have the ability to perform even basic bodily functions and has been housed in the PH in order to be closely monitored every day. In addition, the Commission observed disabled prisoners with different levels of paralysis and disabilities in every prison visited. Some were capable of going about their daily functions with the help of crutches and prosthetics, while some need constant assistance. A life prisoner at WCP described the challenges faced by such prisoners as follows:

“I told you all about my situation because you came in the evening, you will just see us and speak to us. Other than that, usually we are not allowed to meet anyone else. Now when the Minister comes, they hide us... By ‘us’ I mean, the ones using wheelchairs, those who are disabled, or the ones who are using crutches aren’t shown to them. Even when the Minister comes, that day I tried to go to the temple but they didn’t let me. People like us are not allowed. They hide us.”

⁸⁵⁸ For a detailed discussion on challenges of disaster risk management in prisons, please refer chapter Accommodation.

SMR 33 states that the MO must refer to the Prison Director when s/he comes across any person whose physical or mental health is adversely affected by continuous imprisonment or by any kind of imprisonment. Further, as per, SMR 35 (2) the Prison Director must take immediate action and make recommendations accordingly. If s/he is not competent enough to make that decision, s/he must refer the matter to a competent authority.

In national law, Section 80 of the SRs reflects this but contains additional conditions as to when an inmate can be considered for compassionate release on medical grounds. It states that the Medical Officer can refer a prisoner to the Director of Health Services if:

- The concerned prisoner's life is endangered by further imprisonment and no amount of medical care would improve the inmate's condition;
- The prisoner is at the stage where s/he might be deceased before the expiration of his sentence and s/he has relatives and friends who would care of them; or if
- The continued imprisonment will adversely affect the mental condition of the prisoner.

Further, the MO must also inform the SP under Section 48 of the SRs, of such inmate, and the SP shall then duly inform the CGP.

If the prisoner's condition fulfils any of the conditions mentioned above, the Medical Officer must, without any delay, write to the Director General of Health along with the complete medical report of the inmate. The Director General shall then appoint a medical board to examine the prisoner and issue a recommendation, all of which are forwarded to the Governor General through the MOH. Yet, this process is ad-hoc which was highlighted by the former CGP, Mr. Dharmadasa who said:

"The medical boards are ad hoc, i.e. there is no permanent medical board because the composition of the board would depend on the illness of the prisoner- for example, one board would require a neurologist while another requires an oncologist, and it is constituted by the MOH. Courts are the custodians of prisoners. The prisons have to report back to the court when an inmate has to be released but I'm not sure if this is done now. Certain practices like that have to be revived."

It was observed that there are contradictory procedures followed in establishing the medical board. Officers at WCP stated that in practice when an inmate is referred to the medical board the MO is required to fill Form 26 and Form 99⁸⁵⁹ from the DOP with the advice of the MOIC. The SP then forwards these to the MOJ. The Secretary of the MOJ then forwards it to the Secretary of MOH. The MOH then constitutes a medical board, for each prisoner referred, to be considered for release on medical grounds, i.e. for all prisoners whose names are forwarded to them by the MOJ. The respective prisons are informed and the prisoners are then produced before the medical board. The names of those selected to be released by the

⁸⁵⁹ Prison Form 26 titled 'Prison Report' which includes the Medical Officer's Report where he has to mention whether release is advisable to save the life of the prisoner who is considered for the medical board and Form 99 titled 'Particulars of Prisoner No...' which is to be attached to Prison Form 26.

committee are forwarded to the MOJ. The MOJ then forwards it to the President. The President then approves the list after which, it is forwarded to the individual prisons.

The AD, Prisons at MOH informed the Commission of a different process through which a medical board is formed. He stated that the MO of the relevant PH forwards the name of those who needed to be evaluated by a medical board to DGHS. The DGHS then forwards the file to the primary health care services branch, which constitutes a medical board in the GH closest to the prison of the concerned inmate. This decision is then intimated to the relevant GH. The concerned GH then informs the prison of the date of the board and requests them to provide all necessary documents. However, the AD stated that most often due to miscommunication and the lack of human resources, the concerned prison fails to produce the necessary documents and inmate before the medical board. The decision of the medical board is intimated to the DGHS, who then informs the relevant prison. He also further stated that all names recommended for evaluation by the medical board are given directly to the DGHS by individual prisons, and that they do not receive names from the MOJ.

The Commission, having been informed of two differing procedures by the two main Ministries involved in the process, was not able to verify which procedure was applicable in practice because it was found that compassionate medical release provisions are not widely used. Even when the provisions are invoked prisoners are infrequently released. As stated by the MOIC, WCP, "There was a medical board back then that used to decide, but it is not happening anymore. It is a bad thing, I know. It shouldn't have stopped. We have paralyzed patients. There are terminally ill patients as well as cancer patients".

Since the functioning of the medical board is dependent on three different bodies, namely the DOP, MOH and MOJ, the delay and the inefficiency of even one of these bodies will result in delaying the entire decision-making process. As stated by the Additional Secretary, MOJ:

"Many prisoners who are terminally ill, paralyzed etc. have received medical board eligibility reports from the PH doctors and their prisons. The MOJ forwards these letters to MOH. Only MOH can convene the medical board, but MOH to date has never sent a report, recommendations, reply or convened a board to pardon these prisoners. If someone is paralyzed or dying these people can't go out and commit crimes. So, there is no risk in letting them go."

However, when the Acting Director of Health Services for Prisons was asked about the reasons for such delay, he stated that he has not received any requests from the MOJ to constitute the medical board.

A complaint received by the Commission from a disabled inmate at WCP who said that his name has been referred by the prison authorities to the Head Office for the last twelve years to be produced before the medical board, but that he still hadn't been produced, illustrates the opaque nature of this process. He explained his experience as follows:

"In 2006, SM Branch completed all the forms to send me to Welikada Prison Medical Board and sent those forms to the Head Office. From 2006, every year that form is filled by

the SM, with the medical doctor's approval and is sent to the Head Office. We don't know what's happening at the Head Office. The SM Branch sent those forms to the Head Office on 26 May this year [2018] and 6 January last year [2017]. They don't take us before the medical board, only a report is produced to the medical hospital. The medical board did not give us a date to be produced before them."

Similarly, another inmate at WCP PH stated that his name was referred by the prison to be produced before the medical board in 2017. However, the prison officers informed the Commission that no medical board has been constituted to evaluate his case.

7. General observations

The Commission observed that none of the prisons in the sample were disability-friendly nor possessed the necessary infrastructure to support prisoners with disabilities. Specifically, the Commission noted the lack of commodes and disability-friendly toilets in prisons. Inmates are also not provided with necessary assistive equipment like wheel chairs, crutches and canes. The Commission further observed the lack of support offered by officers to disabled inmates in their day-to-day activities, including inadequate medical care to address the needs of disabled prisoners. The Commission was also made aware of the bureaucratic challenges inherent in constituting medical boards to evaluate persons with serious illnesses and those with disabilities for release, which have rendered the process virtually non-operational.

It was observed that prisoners with disabilities required support to perform basic human functions with dignity and the facilitation of their independent mobility in line with the crux of the first SMR that all prisoners are to be treated with respect for their inherent dignity and value as human beings.

25. Challenges faced by the Prisons Administration

'I knew as well as I knew anything that the oppressor must be liberated just as surely as the oppressed. A man who takes away another man's freedom is a prisoner of hatred; he is locked behind the bars of prejudice and narrow-mindedness. I am not truly free if I am taking away someone else's freedom, just as surely as I am not free when my freedom is taken from me. The oppressed and the oppressor alike are robbed of their humanity.'

Nelson Mandela, Long Walk to Freedom

1. Introduction

Officers of the DOP were interviewed during this study to document the challenges they face in discharging their duties. Furthermore, these interviews were conducted to gain an understanding of the systemic and structural issues that restrict or prevent the prisons administration from effectively performing their duties.

It must be highlighted, that throughout this study, the Commission observed many DOP officers to be empathetic and conscientious with regards to the conditions and treatment of prisoners. These officers were found to be highly cognizant of the struggles faced by inmates within prison, even in their personal lives, and were often found expressing concern for the well-being of prisoners who suffered harsh prison conditions, associated estrangement with family and financial hardships. Some of the best recommendations to the Commissions on how to improve correctional policies and practices to strengthen the correctional system were made by prison officers. Prison staff at each prison was mostly found to be obliging and cooperative towards the Prison Study team during prison visits, despite having to escort the team around the prison while being short-staffed and managing other duties. Prison officers and officers stationed at Prison Headquarters were also readily available to assist the Commission by providing access to relevant public documents, circulars, etc. of the DOP, as well as to answer any follow up questions posed by the team. The Commission found the prison administration to be a highly useful and resourceful body, which should be consulted in any prison reform initiatives undertaken by the government.

The law that governs the administration of prisons in Sri Lanka is the PO No 16 of 1877, in particular Part II of the PO, the SRs, and the DSO, which set out the duties of each category of prison officers. The SRs set out the rules relating to prison guards, and further rules with reference to the duties of SPs, jailors and MOs.

There are several categories of prison officers in the DOP and the duties assigned to each category of officers vary according to the hierarchy of officers. The stated mission of the DOP is 'making a fine relationship between prison officers and inmates in order to achieve the main objectives of custody, care, and corrections and thereby to improve job satisfaction of the officers, regulate the welfare of the inmates and thereby utilize the productivity of their

labour for benefit of the country'.⁸⁶⁰ The mission statement highlights the importance of the relationship between prison officers and inmates in effectuating the proper functioning of the prison system to achieve its three main objectives; custody, care and correction. Furthermore, the mission statement also places emphasis on the job satisfaction of prison officers. The DOP states that it seeks to motivate prison officers and build team spirit within the Department.⁸⁶¹ The Performance Report of the DOP for the year 2017 lists 'Human resources development in the Department of Prisons so as to make experienced and satisfied officers through training in different divisions and promotional programmes'⁸⁶² one of the priorities of the institution.

The Commission observed, and this was reiterated by officers during the study, that a number of challenges stemming from systemic and policy shortcomings, not only hindered prison officers from performing their duties effectively, but also had an adverse impact on their personal life and emotional well-being. Each of these challenges are discussed in detail in this chapter.

2. Inadequate number of staff

One of the most pressing issues faced by the DOP is the severe shortage of staff. The total cadre of the DOP is set out in Table 25.1 below and the actual cadre, as at 31 December 2018, in Table 25.2.

Table 25.1. Prison officer cadre⁸⁶³

Commissioner General of Prisons	1	Chief Rehabilitation Officer	5	Vocational Instructor Officer	1 2 0
Additional Commissioner General of Prisons	1	Rehabilitation Officer - i	13	Agricultural Instructor	1 9
Commissioner of Prisons (S.L.A.S)	1	Rehabilitation Officer - ii (Male)	10 9	Agricultural Overseers	2 8
Commissioner of Prisons	5	Rehabilitation Officer - ii (Female)	25	Audio Visual Assistant	1
Director Planning	1	Jailor - ii (Male)	44 6	Dispenser	8 6
Director Engineering	1	Jailor - ii (Female)	30	Photographer	1
Chief Accountant	1	Drill Instructor	3	Editor	1

⁸⁶⁰ Department of Prisons, *Performance Report - 2017*, p 4 <[www.prisons.gov.lk/Publications/performancereport2017/3.%20Performance%20Report%20%20-202017%20\(English\).pdf](http://www.prisons.gov.lk/Publications/performancereport2017/3.%20Performance%20Report%20%20-202017%20(English).pdf)> accessed 3 January 2019

⁸⁶¹ Department of Prisons, 'THE TARGETS' <www.prisons.gov.lk/vision/vision_english.html> accessed 13 December 2018

⁸⁶² Performance Report - 2017, p 5

⁸⁶³ Source: Statistics of Prisons, Department of Prisons, Sri Lanka, 2019

Assistant Commissioner (S.L.A.S)	1	Sergeant (Male)	89 2	Driver (Closed Department)	1 7 2
Assistant Director Planning	1	Sergeant (Female)	38	Driver (Combined Service)	5
Assistant Director (IT)	1	Prison Guard (Male)	4, 47	Ambulance Driver	3
Assistant Director (Agriculture)	1	Prison Guard (Female)	59 4	Motor Mechanic	1 0
Accountant	4	Chief Nursing Officer	1	Motor Mechanic (Electrical)	4
Internal Auditor	1	Nursing Officer	78	Motor Mechanic (Fitting)	2
SSP	6	Public Health Inspector	4	Motor Mechanic (Painting)	2
SSP (Rehab)	1	Translator	3	Tractor Drivers	2 6
Superintendent of Prisons	1 7	Infor. & Communication	1	Three-wheel Drivers	8
Superintendent of Prisons (Rehab)	2	Technology Officer		Office employee service	3 6
ASP (Male)	4 0	Counselling Officer	7	Watcher	5 2
ASP (Rehab)	3	Statistical Officer	1	Executioner	2
ASP (Female)	2	Development Officer	94	Labourer	3 5
Legal Officer	1	Inspector of Work	5	Pump Attendants	1 0
Engineer (Civil)	2	Librarian	1	Director (Medical)	1
Engineer (Mechanical)	2	Technical Officer (Industrial)	1	Deputy Director (Medical)	1
Administrative Officer	2	Draughtsman	2	Medical Officer	4 0
Chief Inspector of Work	1	Info. & Communication Technical Assistant	5	Dentist	4
Chief Jailor (Male)	3 0	Sub Inspector of Work	10	Registered Medical Practitioner	1 9
Chief Jailor (Female)	3	Management Assistant	80	Medical Lab Technician	4
Jailor - i (Male)	5 9	Interpreter	2		
Jailor - i (Female)	4	Industrial Foreman	19		
		Industrial Supervisor	17		

Total = 7820

All SPs and CJs interviewed mentioned that they face numerous challenges managing the day-to-day operations of prisons due to staff shortage. This shortage, which directly impacts

the welfare, rehabilitation as well as the treatment and conditions of prisoners⁸⁶⁴, is illustrated in the table below, which sets out the actual number of officers as at the end of 2018.

Table 25.2. The number of prison officers as at 31 December (2015-2018)⁸⁶⁵

GRADE E				
	2015	2016	2017	2018
<u>PRISONS DEPARTMENT OFFICERS (a) - (d)</u>				
(a). Uniform Staff				
Commissioner General of Prisons	1	1	1	1
Additional Commissioner General of Prisons	-	-	-	1
Commissioner of Prisons	2	4	4	1
Superintendent of Prisons (Special Grade)	4	3	3	2
Superintendent of Prisons	8	5	6	6
Superintendent of Prisons (Industries)	1	-	-	-
Asst. Superintendent of Prisons	19	28	25	33
Chief Jailors	9	23	10	1
Jailors (Class 1)	32	32	22	60
Jailors (Class 11) / Male & Female	275	405	404	354
Prison Sergeants / Male & Female	742	731	848	716
Prison Guards / Male & Female	4,131	4,120	3,857	3,774
Male Nurses	32	28	36	40
Dispensers	65	64	58	58
Agricultural Instructors	7	6	6	6
Agricultural Overseers	1	2	2	2
Industrial Foremen	17	17	15	13
Vocational Instructors & Technicians	92	75	71	71
Industrial Supervisors	7	6	6	6
Drill Instructors	1	1	1	1
Motor Mechanics	9	5	4	4
Van & Tractor / Three Wheel Drivers	197	190	184	184
Executioners	-	-	-	-
Sub Total	5,652	5,746	5,563	5,334
(b). Non - Uniform Staff				
Commissioner of Prisons - (S.L.A.S)	-	-	-	1
Commissioner of Prisons – Rehabilitation	-	-	-	-
Deputy Commissioner of Prisons - (S.L.A.S)	1	-	-	-
Superintendent of Prisons (Special Grade) – Rehabilitation	-	-	-	-

⁸⁶⁴ For a detailed discussion, please see chapters Access to Medical Treatment and Rehabilitation of Prisoners.

⁸⁶⁵ Statistics of Prisons, Department of Prisons, Sri Lanka. 2018

Superintendent of Prisons – Rehabilitation	-	-	-	-
Asst. Superintendent of Prisons – Rehabilitation	1	3	2	2
Chief Rehabilitation Officers	2	2	1	5
Prison Rehabilitation Officers - (Class 1) / Male & Female	10	13	12	8
Planning Assistants	-	-	-	-
Development Officers	54	53	57	58
Prison Rehabilitation Officers - (Class 2) / Male & Female	102	117	108	109
*Inspector & Sub Inspector of Works	-	-	5	5
*Draughtsman	1	1	1	1
Information & Communication Technology Assistant	2	2	2	2
Electro Cardiographers	-	-	-	-
Audio Visual Assistants	-	-	-	-
Work Overseers	-	-	-	-
Watchers	52	52	30	41
Pump Attendants	4	4	4	4
Labourers	34	34	25	27
Sub Total	263	281	247	263

Total = 5597

The stipulated number of male prison guards in the cadre is 4447, while the number of female prison guards required is 594, which is 5041 in total. However, the existing number of prison guards is (Male and Female) 3774 as at 31 December 2018⁸⁶⁶, pointing to a shortage of staff in all prisons. A similar inadequacy was observed in the categories of prison sergeants; the required number of male prison sergeants is 892 and the female prison sergeants are 38⁸⁶⁷, which amounts to a total of 930, while the existing number of male and female sergeants is 716.⁸⁶⁸ Similarly, in terms of the medical staff, a shortage of dispensers and nursing officers was observed. The required number of dispensers and nursing officers is 86⁸⁶⁹ and 78,⁸⁷⁰ respectively while only 58 dispensers and 40 nursing officers were employed as at 31 December 2018⁸⁷¹

It is observed that there is an increase in the number of prisoners from 2015 to 2018 while the number of prison guards in service has decreased during this period. The graphical representations below depict the fluctuations in the number of prison guards in the DOP and the fluctuations in the daily average of the prisoners (convicted and remandee) in all prison institutions from 2015 to 2018.

⁸⁶⁶ DOP, *Prisons Statistics of Sri Lanka* (Vol. 38, 2019), p 10. The prison statistics do not provide a breakdown according to sex and instead provides only the total number of men and women.

⁸⁶⁷ DOP Performance Report - 2017, 'Prison Officer Cadre', p 8

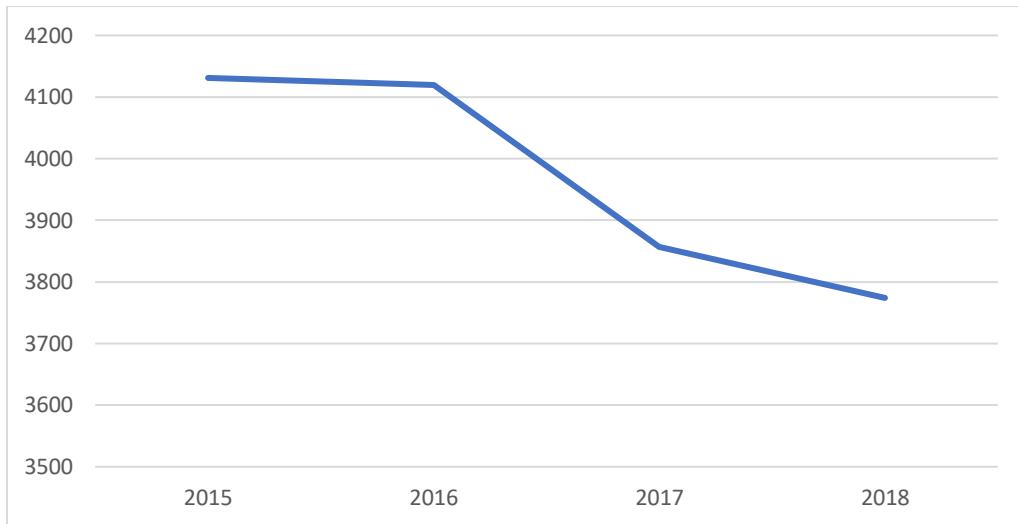
⁸⁶⁸ DOP, *Prisons Statistics of Sri Lanka* (Vol. 38, 2019), p 10.

⁸⁶⁹ Performance Report - 2017, 'Prison Officer Cadre', p 10.

⁸⁷⁰ ibid p 9.

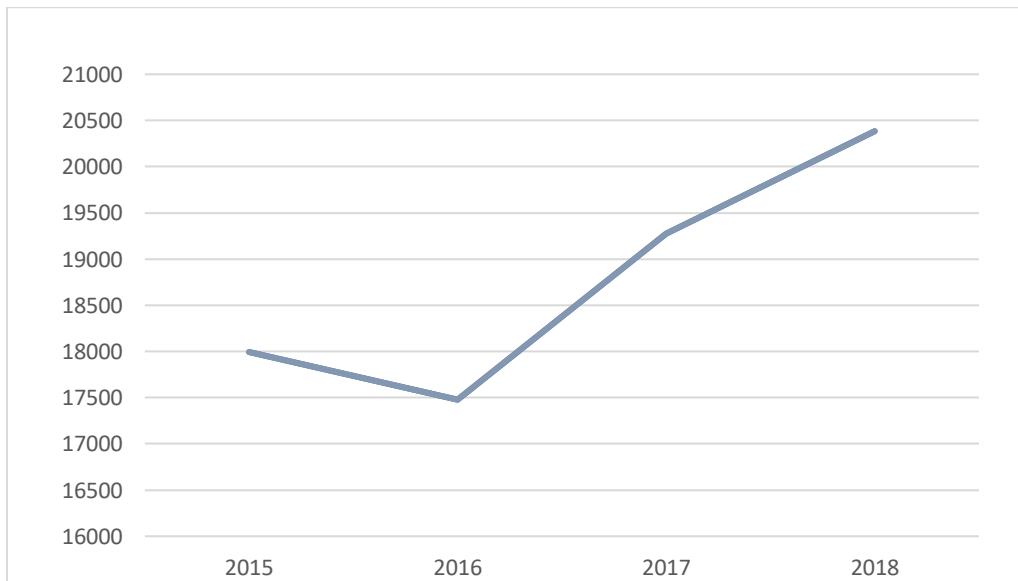
⁸⁷¹ DOPs, *Prisons Statistics of Sri Lanka* (Vol. 38, 2019), p 10.

Graph 25.1. The total number of prison guards of the Department of Prisons (2015-2018)⁸⁷²



This graph depicts the total number of prison guards as at 31 December of each year from 2015 to 2018.

Graph 25.2. The population of prisoners (2015-2018)⁸⁷³



⁸⁷² DOP, *Prisons Statistics of Sri Lanka* (Vol. 38, 2019)

⁸⁷³ Ibid

This graph depicts the daily average strength of prisoners (convicted and remandee) of each year from 2015 to 2018.

Table 25.3. Prisoners: Male uniform officer⁸⁷⁴ ratio in prisons as at 14 February 2019⁸⁷⁵

Prison	No. of male prisoners	No. of male officers	Ratio
ACP	865	147	5.9:1
AOPC	90	30	3:1
ARP	692	123	5.6:1
BATRP	315	141	2.2:1
BRP	334	127	2.6:1
CRP	1319	255	5.1:1
GRP	801	171	4.7:1
HWC	175	60	2.9:1
JRP	564	108	5.2:1
KGRP	712	70	10.1:1
KRP	589	154	3.8:1
MCP	1716	232	7.4:1
NMRP	1788	204	8.8:1
NRP	1665	165	10:1
PCP	1548	208	7.4:1
POPC	518	95	5.4:1
WCP	2975	344	8.6:1
WWC	239	56	4.3:1

Table 25.4. Prisoners: Female uniform officer⁸⁷⁶ ratio in prisons as at 14 February 2019⁸⁷⁷

Prison	No of female prisoners	No of female officers	Ratio
ACP	131	28	4.7:1
ARP	24	20	1.2:1

⁸⁷⁴ Jailors, Sergeants and Prison Guards are considered for the calculation of ratios

⁸⁷⁵ Information obtained by the Commission from DOP.

⁸⁷⁶ Jailors, Sergeants and Prison Guards are considered for the calculation of ratios

⁸⁷⁷ Information obtained by the Commission from DOP

BATRP	315	87	3.6:1
BRP	18	10	1.8:1
GRP	57	23	2.5:1
JRP	22	12	1.8:1
KRP	37	24	1.5:1
NRP	128	20	6.4:1
PCP	94	21	4.5:1
WCP	438	73	6:1

Table 25.5. Prisoners: Rehabilitation Officer ratio in prisons as at 14 February 2019⁸⁷⁸

Prison	No. of prisoners	No. of Rehabilitation Officers	Ratio
ACP	1083	7	155:1
ARP	631	9	70:1
BATRP	343	2	172:1
BATRP	337	4	168.5:1
BRP	353	3	118:1
CRP	1231	9	137:1
GRP	795	4	199:1
HWC	196	7	28:1
JRP	557	9	62:1
KGRP	692	3	231:1
KRP + KWC	769	9	85:1
MCP	1677	20	84:1
NRP	1689	7	240:1
PCP	1480	17	87:1
POPC	463	15	30:1
WCP	3140	32	98:1
WWC	255	5	51:1

According to the prison statistics of 2018,⁸⁷⁹ the prisoner to guard ratio is 5:1⁸⁸⁰. According to Table 25.3, it is observed that the prisoners to prison officer (male) ratio, numerically varies from 2.2 to 10.1 prisoners per officer across the prison system. The highest prisoners to officer ratio is observed in KGRP and NRP, which are overcrowded remand prisons, as well as in WCP, PCP and MCP, which are three of the most highly populated closed prisons in the prison system.⁸⁸¹ In terms of female officers, the highest prisoner to female prison officer ratio is observed in NRP, while the lowest ratio is observed in ARP.

⁸⁷⁸ Information obtained by the Commission from DOP

⁸⁷⁹ Prisons Statistics of Sri Lanka (Vol. 38, 2019)

⁸⁸⁰ The ratio was obtained using the daily average strength of convicted and remandees for the year 2018 and the existing number of prison guards as at 31 December 2018.

⁸⁸¹ For a detailed discussion on the impact of the ratios of Rehabilitation Officers to prisoners (Table 25.5.), please refer chapter Rehabilitation of Prisoners.

However, the number of officers involved in the daily functioning of a prison that requires multiple escorts to Courts, transporting prisoners to clinics in GH, transferring prisoners from one prison to another prison, in addition to the daily administrative desk duties, mean that given the staff shortage the actual prisoner to officer ratio is much higher. This means that at any given time during the day the number of prison officers in prison will be much less than the number of officers on duty on a particular day, as many will be out of prison on different escort duties, thereby increasing the prisoner-officer ratio. The gravity of the staff shortage in the prison system was described by an officer at the Prisons Headquarters thus:

“If you go to WCP at night, you will see that there are about eight to ten officers on duty. In a prison with more than 3000 prisoners... that the country calls hard core dangerous criminals, they are put behind the tall walls and only ten officers are there with them in the dead of the night. How easy would it be for some powerful mobster to break out of prison? There are no high-tech security measures. You can break the padlock with a stone and there is only a sleep deprived man carrying a baton. There are more challenges and responsibilities than it is humanly possible to handle but no matter what goes wrong, you are sent for disciplinary inquiries and none of the systemic deficiencies are relevant there.”

One of the best illustrations of the staff shortage is ACP, where the prisoner population increased from approximately 300 to a count exceeding 1000, within a span of a few months. At the same time, the staff strength remains at approximately 300, with no commensurate increase in the number of officers assigned to the prison. It should be noted that the population at ACP increased due to the transfer of convicted prisoners who were long-term prisoners, such as life prisoners, to ACP from other prisons. Further, a decision by the MOJ in July 2018, resulted in all convicted female prisoners from WCP being transferred to ACP, thereby increasing the ACP female prisoner population as well. It must also be highlighted that, since ACP is situated a considerable distance from the nearest hospital and because many prisoners have to be transported to the NH in Colombo or Kandy for specialist treatments, the inadequacy of staff as well as the inadequacy of vehicles required for escorting prisoners are problems which the administration at ACP encounters daily.

The lack of staff has an adverse impact on the management of prisons as well as on the prison officers of the lower cadre tiers, such as the prison guards and sergeants because due to this inadequacy, prison officers have to work extended hours and multiple shifts and even function in multiple roles. It was mentioned during interviews with prison guards that the additional amount of work assigned to them as a consequence of the staff shortage, has led to the loss of job satisfaction, increased levels of stress as well as burnout, and thereby contributes to the inefficiency of the prison administration.

The shortage of officers also impacts the ability of a prisoner to fully exercise their rights. An example of the adverse effects of the shortage of staff is JRP, where no prisoner is allowed to spend more than thirty minutes outside the wards. This is due to the shortage of staff, which prevents them from being able to appropriately supervise and monitor prisoners during the

time they spend outside. The Commission was also informed that staff shortages can result in special categories of prisoners, as well as YOs in certain remand prisoners, being denied their thirty minutes of outside time as there are not enough officers to supervise these prisoners. These prisoners would have to remain in their locked wards throughout the day.

Following is a table demonstrating the number of officers allocated to each duty, across prisons in the sample.

Table 25.6. Male officers per task across prisons on 26 February 2019⁸⁸²

Prison	Desk duties		Court escorts		Hospital escorts		Field duty		Other		Night duty		Prisoner population	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F
ACP	21	-	49 ⁸⁸³	-	-	-	18		-	-	24		865	131
ARP	16	-	61	-	6	-	19	-	19 ⁸⁸⁴	-	23	-	692	24
BATRP													315	22
BRP	20	-	30 ⁸⁸⁶	-	-	-	-	-	-	-	32		334	18
CRP	36	-	143 ⁸⁸⁷	-	-	-	36	-			26	-	1319	0
GRP	32	1	37	5	9	0	42	5	2 ⁸⁸⁸	0	16	-	801	57
HWC	10	-	2	-	-	-	45 ⁸⁸⁹	-	-	-	15	-	175	0
JRP	10 ⁸⁹⁰	-	40 ⁸⁹¹	6	-	-	22	4	-	-	26	2	564	22
KGRP	24	-	29 ⁸⁹²	-	-	-	19	-	-	-	12	-	712	0
KRP	30	4	35	5	3	1	26	11	7 ⁸⁹³	0	22	4 ⁸⁹⁴	589	37
MCP	41	-	52	-	4	-	16 ⁸⁹⁵	-	20 ⁸⁹⁶	-	45	-	1716	0
NMRP	28	0	68 ⁸⁹⁷	0	-	-	24	0	-	-	34	0	1188	0
NRP	29	1	58 ⁸⁹⁸	8			16	10	12 ⁸⁹⁹		23	4	1665	128
PCP	40	-	70	9	19	-	34	6	18 ⁹⁰⁰		34	6	1548	94

⁸⁸² Information obtained by the Commission from DOP

⁸⁸³ All escorts including to hospitals and other prisons.

⁸⁸⁴ AOPC duty officers

⁸⁸⁵ AOPC prisoner population

⁸⁸⁶ All escorts including to hospitals and other prisons

⁸⁸⁷ All escorts including to hospitals and other prisons. CRP also provides escort services for NMRP and WCP and is tasked with escorting children, mentally ill prisoners/persons as directed by the Courts to places of detention and/or hospitals.

⁸⁸⁸ Officers accompanying out-party prisoners

⁸⁸⁹ Seven officers out of this forty-five have done night duty the previous night. i.e. double shifts.

⁸⁹⁰ Five of these ten officers later on the day went on escort duties.

⁸⁹¹ Eighteen out of this forty were on night duty the previous day. i.e. double shifts.

⁸⁹² All escorts including to hospitals and other prisons.

⁸⁹³ KOPC duty officers

⁸⁹⁴ Two female officers have done double shifts. i.e. day duty and night duty on the same day.

⁸⁹⁵ Also in charge of work parties

⁸⁹⁶ Armed duty officers i.e. out post duty, escort security duty

⁸⁹⁷ All escorts including to hospitals and other prisons

⁸⁹⁸ All escorts including to hospitals and other prisons

⁸⁹⁹ Armed duty officers i.e. out post duty, escort security duty

⁹⁰⁰ Parade/Armed duty i.e. out post duty, escorts security duty

POPC ⁹⁰¹	-	-	-	-	-	-	68	-	-	-	25	-	518	0
WCP	48	-	5	-	11	-	8	-	12 ⁹⁰² 19 ⁹⁰³ 5 ⁹⁰⁴	-	27	-	3975	438
WWC	21	-	-	-	-	-	22	-	-	-	23	-	239	0

As illustrated in the table above, in order to compare and analyse the impact of the staff shortage on the daily functioning of a prison, the Commission obtained data from across prisons on the allocation of officers to duties on a given day. Examples of acute shortage are set out below to illustrate the extent of the problem and the actual prisoner to officer ratio. On 26 February 2019, in JRP, which had a prisoner population of 586⁹⁰⁵, seventy-two officers were on duty during the day:

- Of the seventy-two officers, forty officers were assigned to escort prisoners to courts and other places such as GH.
- Of these forty officers, eighteen had been on the night duty shift the previous day. i.e. these eighteen had been working double shifts.⁹⁰⁶
- Of the remaining thirty-two officers, twenty-two officers were assigned for field duty within the prison and ten officers were assigned desk duties in office branches.
- Of the ten desk duty officers, five officers had to be reassigned to court duty in order to escort prisoners, due to lack of officers for escort duties⁹⁰⁷ i.e. in addition to the forty officers assigned initially for escorts.
- On the same day thirty officers had been on leave/not in prison due to other reasons such as those who had been suspended, interdicted, on maternity leave etc.
- This illustrates that only a total of twenty-seven officers (including the desk officers) were inside the premises of the prison during the day time to control 586 prisoners.
- The prisoner-prison officer ratio is therefore 22:1.

WCP, which housed 3413⁹⁰⁸ convicted prisoners on the same day, had 108 male uniform officers on day duty:

- Of the 108 officers, five officers went on escorts to Court
- Eleven officers went on escorts to GH clinics
- Nineteen officers were stationed at GH with prisoners receiving in-patient care
- Five were at Colombo PH as it is under the administration of WCP
- Forty-eight officers were at desk duties (i.e. RC, SM, Marks Branch)
- Twelve officers were in charge of out-party prisoners

⁹⁰¹ POPC desk duties are managed by PCP

⁹⁰² Officers accompanying out-party prisoners.

⁹⁰³ Officers stationed at GH with prisoners receiving in-patient care.

⁹⁰⁴ Officers sent to Colombo PH duties.

⁹⁰⁵ Morning unlock of 15 February 2019, Department of Prisons.

⁹⁰⁶ Allocation of prison officers on 26 February 2019.

⁹⁰⁷ *ibid*

⁹⁰⁸ Morning unlock 15 February 2019, Department of Prisons.

- Only eight officers⁹⁰⁹ remained for field duty in the prison. Among the tasks of these eight officers on field duty are guard duty for special sections (YO, R, Chapel cells, L hall and I-2 where YOs are housed).

ACP which housed 996⁹¹⁰ convicted and remand prisoners, on the same day had only thirteen officers for field duty while five officers were monitoring visits received by prisoners. On the same day, in ACP, forty-nine officers were sent on escorts (to other prisons, to courts, to hospitals) while twenty-one officers were tasked with desk duties.

Highlighting the challenges the severe staff shortage presents, the CJ of KGRP stated that while the prison requires a minimum three jailors on field duty (one as the kitchen in charge to monitor the rations accepted to the prison, one as the receiving jailor and one as the visit duty in charge jailor) on many given days KGRP would only have one jailor who would have to perform all three tasks. For example, on 26 February 2019, seven jailors had to be sent on escort duties and only one jailor was in the prison to oversee all field duties.

It is the few field-duty officers that are tasked with being the first responders to medical emergencies, fights or riots or for simple tasks, such as a condemned prisoner wanting to meet the SP to relay a grievance and needs to be escorted by a duty officer. Such cases demonstrate that staff shortages directly affect the physical and mental well-being of prisoners and many aspects of their rights as well, such as seeking a remedy for a grievance and access to medical treatment. Inadequate officers for escort duty leads to delayed medical treatment, as prisoners would have to miss clinic dates or assigned surgeries and medical tests, which is one of the common grievances of prisoners.⁹¹¹ The shortage of Rehabilitation and Counselling Officers also affects the processing of Home Leave and License Board as well as access to counselling services. Further, it impacts on family visits prisoners receive. For instance, prisoners complain they are afforded only a short time to speak with their visitors and their food is checked in a haphazard manner.⁹¹² This is due to the large number of visits conducted in a day – since remandees are allowed visits six days of the week- and the limited number of officers available to conduct and monitor such visits.

Senior prison officers also alluded that the lack of officers affects the safety and the security of the prison, and in the event of a riot or a mutiny, officers would be outnumbered. For example, in WCP there were only twenty-seven prison officers⁹¹³ on the night duty shift on 26 February 2019, while WCP houses more than 3400 convicted prisoners⁹¹⁴. On the same day, as discussed above, during the daytime, only eight officers were on field duty inside the prison while forty-eight officers were assigned to office branches.⁹¹⁵ In an instance of a breakout of a riot during the day time, controlling the riot would become a challenging task for the officers on field duty even with the assistance of the forty-eight officers in office

⁹⁰⁹ Does not include officers for visit duty, receiving duty, kitchen duty, outpost security duty, work party duties.

⁹¹⁰ Morning unlock of 15 February 2019, Department of Prisons.

⁹¹¹ For a detailed discussion, please see chapter Access to Medical Treatment.

⁹¹² For a detailed discussion, please see chapter Contact with the Outside World.

⁹¹³ Allocation of prison officers on 26 February 2019.

⁹¹⁴ Morning unlock of 15 February 2019, Department of Prisons.

⁹¹⁵ Allocation of prison officers on 26 February 2019.

branches. The failure or delay in controlling such situations poses an imminent threat to the lives of prison officers as well as prisoners. Hence, prison officers may resort to violence for the purpose of inflicting fear among the inmates in order to assert their authority and maintain discipline within the prison through instilling fear.⁹¹⁶

The last revision of the cadre was undertaken in 2013, and many officers stated that the cadre needs to be revised on a regular basis to be responsive to the fluctuations in the prisoner population as well as the changing needs of the prison system. The specific staff requirement of each prison would also depend on its geographical and structural aspects as well. For instance, ACP, which is the newest and the largest prison in terms of acreage, also requires officers with skills, such as the management of CCTV systems.

The Commission was informed that over the last few years recruitment processes had been initiated to fill the vacant positions with even interviews with candidates being held, but due to administrative and political factors recruitments had not taken place.

3. Working hours

“Sometimes officers are on duty three to four days in a row. Tonight duty, tomorrow court duty and night duty again the next day. I think the PO specifies the maximum number of hours an officer can be on duty – I think we are in violation of the PO. It’s not just a prisoner who is being punished. When a crime happens, the prisoner is punished by the law. The prisoner’s family is punished. The [prison] officer is punished and the prison officer’s family is being punished. What a marvellous system we have. What justice is there in this country?”

Prison Officer, Officer Welfare Branch, Prison Headquarters

The working hours of prison officers vary according to the position and assigned duties. The usual office hours for the SPs and the CJs is 0800h to 1700h, which includes weekdays as well as weekends and they are on call twenty-four hours. CJs, during interviews, mentioned that they are always considered to be on duty, save for situations when they are on leave and an officer is appointed to cover their duties. It was also mentioned that SPs and CJs report to duty outside the usual working hours of 0800h and 1700h if there is an emergency, which requires their supervision and guidance, such as a riot, custodial death, or an escape. Some CJs mentioned that they stay in prison until the evening lock-up is complete around 1730h. This involves the locking up of all prisoners in their cells or wards and obtaining the count of all prisoners in each ward and cell in order to ensure the total number of inmates at the point of evening lock up tallies with the count obtained during the morning unlock, and the difference between the number of prisoners is accounted for by those received and sent from the prison during the day.

⁹¹⁶ For more information, see chapters Discipline and Punishment and The Continuum of Violence.

The duties assigned to jailors differ and the length of the shift may also vary accordingly. The Receiving Jailer, who is in charge of receiving and admitting remandees and convicts, will commence the shift at noon and will be on duty for twenty-four hours until the duty is handed over to the next receiving jailor the following day. There are jailors in charge of offices such as the SM, RC, MSK and ESK, whose usual working hours are 0800h to 1700h and the working days include weekdays as well as weekends.

Duties are assigned to prison officers every day during the morning parade by the CJ. The jailors will be assigned duties such as monitoring visits, while sections will be assigned to prison guards who are on yard duty. The working hours of the prison guards and prison sergeants who are assigned to the offices are 0800h to 1700h, while they are sometimes assigned to yard duty or to go on escorts due to the shortage of staff.

The prison officers who are assigned duties such as court duty and escorting prisoners to other prisons, have to report to duty earlier than the usual reporting hours. When assigned to escort duty outside the duty station, some prison officers have to report to duty around 0400h. The prison guards as well as the SPs stated that the number of courts to which each prison had to produce prisoners has increased over the years, and hence the officers who are allocated to court duties have to travel to multiple prisons in one day. Producing prisoners in courts on the date fixed by the respective court is given priority by the CJ when assigning prison guards. Consequent to the aforesaid prioritization and the shortage of staff, delays and postponement of escorts of prisoners for clinics were reported in many prisons.⁹¹⁷

3.1. Prison guards work shifts

Morning shift	0800h	1700h	
Night shift	1700h	0830h	
Night shift is divided into three parts to allow officers to take short breaks. Night shift guards are divided into two group that alternate between the three parts of the night shift			
	Night shift group one	1700h	2015h (group two is on break)
	Night shift group two	2015h	0115h (group one is on break)
	Night shift group one	0115h	0615h morning unlock time (group two is on break)

Even though this mechanism is designed to allow prison officers to rest in between the shifts, in practice there are issues in implementing this procedure because of the shortage of prison guards. Due to this, prison officers are assigned consecutive multiple shifts. For instance, the

⁹¹⁷ For a detailed discussion, please see chapter Access to Medical Treatment

Commission came across prison guards who were assigned three consecutive shifts. These officers mentioned that they had to attend to the morning shift, night shift and court duty the following day. It is noteworthy to mention that the prison officers who are escorting prisoners to hospitals outside the prison premises for clinics and other treatments stated that they have to remain standing the whole day until all prisoners are examined by the doctor.

4. Recruitment and promotions

The recruitment of prison officers is governed by the Scheme of Recruitment (hereinafter referred to as SOR) which sets out the terms for the recruitment of prison guards, Jailors (Class II), ASPs and the CGP. The eligible candidates recruited by the DOP for these positions, have the opportunity to rise through the ranks via promotions. The criteria for promotions will also be governed by the SOR for the relevant rank. The DOP has formulated a draft proposal to revise the existing SOR to replace the current practice of regularly issuing circulars to amend the existing SOR.

According to the existing SOR, prison guards are recruited after calling for applications via a Gazette notification and eligible individuals will be selected via interviews. These prison guards will qualify to be promoted to the rank of prison sergeant when they complete eight years of continuous service. However, it was observed that there are prison guards and prison sergeants who have exceeded twenty years of service but have not received sufficient opportunities for the vertical career development.

In order to resolve this issue and for the purpose of standardizing the SOR as well as formulating a mechanism for promotions, the DOP has drafted a new SOR in 2018, which is titled Service Constitution. Provided that the mechanism for promotions is implemented successfully, it allows prison officers of lower ranks to be encouraged to discharge their duties properly for the purpose of qualifying to apply for the vacancies in the superior positions in the DOP. The ranks below the Jailer Class II, such as prison guards and sergeants, as well as other categories of prison officers, such as Vocational Instructors and Agricultural Instructors are given more opportunities to rise through the ranks.

A significant factor that influences the job satisfaction of prison officers is the opportunities available to progress vertically through the ranks. Therefore, the draft Service Constitution, which for instance, allows Vocational Instructors and Agricultural Instructors to be promoted to the rank of ASP instead of stagnating in one position, is a positive step towards addressing the lack of vertical progression for certain categories of officers and the resulting lack of motivation. Another progressive change proposed by the draft Service Constitution is the ability of any officer below the rank of Jailer Class II, to apply for the post of Jailer Class II under the internal promotion mechanism, provided that he or she has completed five years in service and possesses a degree in any discipline. This condition, as opposed to the existing internal promotion mechanism under which the completion of the required number of years (ranging from six years to twelve years based on the current rank) is mandatory, encourages

prison officers to seek opportunities for academic qualifications as well as career advancement.

The draft Service Constitution categorizes prison officers into three categories- secondary, tertiary and senior - while the position of Jailor is identified as 'Prison Inspector'. The position of Commissioner of Prisons under the current system is changed to Deputy Commissioner General of Prisons while the number of recruitments for the said position is six. The categories of staff are as follows:

Senior Level Cadre:

- Commissioner General of Prisons
- Additional Commissioner General of Prisons
- Deputy Commissioner General of Prisons
- Senior Superintendent of Prisons
- Superintendent of Prisons
- Assistant Superintendent of Prisons

Secondary Level Cadre:

- Chief Inspector of Prisons
- Inspector of Prisons

Tertiary Level Cadre:

- Sub-Inspector of Prisons
- Prison Sergeant
- Prison Guard

Reportedly, in 2013, the Department of Management Services revised the SOR to appoint the CGP from the Sri Lanka Administration Service instead of the DOP. This is said to have been implemented despite the DOP pointing out to the Department of Management Services the importance of the CGP being appointed from within the ranks of the DOP. The prohibition on persons from within the prison service from being appointed CGP undermines the morale of the staff as they cannot aspire to ever hold the position of the most senior officer in the Department. It also denies the prison system an officer with institutional memory, in-depth knowledge and experience of the system and issues. As highlighted at the onset, prison officers are best placed to devise the most suitable and specialised correctional policies as they directly deal with prisoners for a significant portion of their career and understand the nuanced challenges faced by the DOP, that an external candidate may not be able to appreciate due to lack of specific insight.

5. Department of Prisons staff training

The Centre for Research and Training in Corrections (hereinafter referred to as CRTC) of the DOP, functioning under the supervision of a SP, is responsible for the training of prison officers. The Centre provides basic training to new recruits as well as in-service training. The basic training includes weapons training and modules, such as the rules and regulations of

the DOP and the human rights and duties of prison officers.⁹¹⁸ The duration of the basic training was recently increased from three months to one year and includes on-the-job training at their respective duty stations where they perform their duties under the supervision and the guidance of experienced officers who supervise them. The training of Direct ASP and promoted ASPs, which is a mandatory three-month residential training programme, includes a module on human rights, fundamental rights and the SMRs.

Regional prison officers can only receive training in Colombo, but short-staffed prisons cannot afford to release officers for training. As a result, the Officer Welfare Division stated that many prison officers travel back and forth from Colombo in order to receive training or pursue a diploma, and this contributes to stress and fatigue, particularly when they are already overworked. They stated that consequently, “the first thing you see a prisoner do, it makes you angry”.

Table 25.7 shows the number of officers of each category trained by the CRTC from 2015 - 2018.

Table 25.7. The number of prison officers trained by the Department of Prisons from 2015-2018⁹¹⁹

Type of Officers	2015			2016			2017			2018		
	M	F	Total	M	F	Total	M	F	Total	M	F	Total
New Recruits Trained												
1. Superintendents / Asst. Superintendents	-	-	-	-	-	-	-	-	-	-	-	-
2. Rehabilitation Officers	-	-	-	12	-	12	-	-	-	-	-	-
3. Jailors	-	-	-	116	4	120	-	-	-	-	-	-
4. Prison Guards	55 3	12 3	676	-	-	-	26 1	3 3	294	291	3 4	325
5. Other Grades	-	-	-	-	-	-	-	-	-	24	2 3	47

⁹¹⁸ SMR 76, 2015, states training of prison officers should at minimum include a) relevant national legislation, regulations and policies, as well as applicable international and regional instruments, the provisions of which must guide the work and interactions of prison staff with inmates;

(b) Rights and duties of prison staff in the exercise of their functions, including respecting the human dignity of all prisoners and the prohibition of certain conduct, in particular torture and other cruel, inhuman or degrading treatment or punishment;

(c) Security and safety, including the concept of dynamic security, the use of force and instruments of restraint, and the management of violent offenders, with due consideration of preventive and defusing techniques, such as negotiation and mediation;

(d) First aid, the psychosocial needs of prisoners and the corresponding dynamics in prison settings, as well as social care and assistance, including early detection of mental health issues.

⁹¹⁹ Statistics of Prisons, Department of Prisons, Sri Lanka. 2018

Total	55 3	12 3	67 6	128	4	132	26 1	3 3	29 4	315	5 7	372
In Service Officers Trained												
1. Superintendents/ Asst. Superintendents	24	-	24	72	-	72	9	-	9	37	-	37
2. Senior Rehabilitation Officers	7	-	7	-	-	-	-	-	-	-	-	-
3. Chief Jailors /Jailors (Class -1)	16	-	16	45	-	45	-	-	-	45	-	45
4. Jailors	12 6	2	128	194	6	200	17	2	19	237	5	242
5. Rehabilitation Officers	12 8	12	140	80	1	81	4	-	4	76	1 4	90
6. Prison Sergeants	14 5	5	150	134	4	138	16 9	5	174	195	2	197
7. Prison Guards	33 9	41	380	508	7	515	33	1	34	527	4 7	574
8. Other Grades	5	-	5	122	5	127	-	-	-	70	4	74
Total	79 0	60	85 0	1,1 55	2 3	1,1 78	23 2	8	24 0	1,18 7	7 2	1,2 59

According to Table 25.7 above, the total number of new recruits trained by the CRTC has increased from 479 in 2014 to 676 in 2015, while a significant decrease is noticed in the three following years. It was mentioned by many officers that they have not received proper re-training after the basic training programme, except for the purpose of promotions when they are given training on the respective duties of their new positions.

The Training Needs Assessment (hereinafter referred to as the TNA) of the DOP undertaken in 2014 with the assistance of the United Nations Development Fund (UNDP) identifies the need to restructure the training programmes for the prison officers through a two-fold approach; pre-service training and in-service training. The pre-service training involves the grooming of an individual to assume duties as an officer of the DOP, and mainly focuses on the technical aspects of the job. The TNA recommends that issues such as riot control or disaster management, first aid, security and intelligence, ICT in prison administration as essential areas be included in the training curriculum for the pre – services training of uniform officers, and especially for the ranks of prison guards, jailors and ASPs.

A noteworthy observation is made in the TNA with regard to prisoners who work in agricultural or industrial sections of prisons. It states that, since these prisoners spend most of their time with uniform staff, such as Vocational Instructors or Agriculture Instructors, such prison officers need to undergo pre-service training in areas such as rehabilitation, counselling, riot and grievance management as well as technology-related aspects, such as

current market demands, modern technology, new tools and machinery etc. The TNA makes special observations with regard to the Rehabilitation Officers in prisons and recommends areas, such as the administration of prisons, international framework of correction of prisoners, international human rights framework, including the rights of prisoners as well as the sociological aspect of crimes and the rehabilitation of prisoners, among many other areas, to be emphasized during their training. The in-service training of prison officers is recommended in the form of a five-stage approach by the TNA and the stages are as follows:

- Induction or orientation training;
- Foundation training;
- On-the-job training;
- Refresher or maintenance training; and
- Career development training.

The introduction training is an orientation for the officer to become familiar with the new work environment and in the instance of a promotion, to obtain an understanding about the new responsibilities assigned to him/her. The orientation is recommended to cover vital areas, such as interpersonal relationships, work ethics, rules and regulations as well as human rights. The foundation training can be identified as the bedrock of the training, which guides the prison officer in effectively discharging his/her functions. The key areas identified by the TNA are the sociological aspects of prisons administration, minimum standards and rules, purpose of the correction system and concerns of prisoners, human rights, human resource management, stress management, languages, and Information Communication Technology.

The TNA notes that the CRTC is not capable of catering to all training requirements of in-service officers as well as new recruits, and recommends the guidance of senior officers in the field as a part of the training, thus recognizing the service experience of senior officers as an invaluable mechanism of knowledge transfer. The need for such guidance was identified in the areas of Court duties, working with YOs and discharging the duties of the RC Branch.

The knowledge and training provided during the initial three stages needs to be updated, especially in areas which frequently change, such as vocational training, owing to the rapid changes in the technology. Further, the TNA identified international and domestic laws related to prison administration, fire arms handling and shooting, prisoners rehabilitation and correction, human resources management, self-defence and institutional security management, department rules and regulations, personality and career development, psychology and sociological aspects of prisoners, and communication, as some areas which need to be regularly and consistently refreshed.

Talent development was identified by the TNA as a concept on which the DOP should focus, since it involves training, career development, career management, and organizational development, as opposed to traditional training. This mechanism is expected to enable the horizontal as well as vertical career development of officers. The CRTC, or any training

institution which will be established in the future, can assist the prison officers to obtain the necessary training in language competency, accounts, laws, rules and regulation relevant to the prison system and human rights. This mechanism of horizontal and vertical career development of prison officers through talent development will consequently influence the job satisfaction of prison officers and increase staff retention. It was also observed that the language proficiency of prison officers in both national languages (Sinhala and Tamil) is essential for better communication with inmates of different ethnicities. It was suggested that English language proficiency should also be improved to communicate with foreign detainees. Hence, the TNA recommends training programmes for the improvement of language proficiency in English and one national language apart from the national language in which an officer is proficient.

The TNA further recommends that the DOP convert the CRTC to an 'Academy of Prison Administration' or a 'School of Prison Administration' for the purposes of enhancing the quality of the training as well as for the benefit of external parties, such as researchers, academics and students. The importance of training is further emphasised by recommending the establishment of a division for Research, Training and Development under the supervision of a Commissioner who will also monitor and supervise the CRTC. It is also recommended that the training facilities of the CRTC should be decentralised on a geographical basis to ensure that prison officers in different prisons island wide, has equal access to training.

5.1. Weapons training

It was frequently mentioned in the interviews of prison guards that weapons training was provided only once during the basic training, and training in the use of T56, which is the weapon currently issued to the prison officers, was considered inadequate by many prison officers. It was mentioned by an officer who served in the DOP for twenty-five years, that he has fired only nine bullets with a T56 during his entire service, which was during the basic training.

It is of immense importance that prison guards who will be armed during escorts, prison duty, hospital duty and turret duty around the perimeter of the prison premises are provided adequate weapons training as part of basic and in-service training, to ensure they use weapons safely and to prevent collateral damage in the event of an incident. Most importantly, they need to be periodically trained on the use of minimum force and the protocols to be followed when using force.

5.2. Language and IT proficiency

As identified by the TNA, an area that requires attention is the language proficiency of prison guards. It was suggested by prison officers that adequate training to improve their Tamil proficiency is required, since they face difficulties in communicating with Tamil speaking inmates and have to seek the assistance of inmates who are proficient in Tamil and Sinhala.

Adequate training on IT, personality development, as well as soft skills, such as telephone etiquette, were also mentioned as necessary. A SP suggested that workshops must be conducted on a regular basis for prison officers, with a special emphasis on prison guards. He emphasized this should be aimed at changing the attitudes of officers towards prisoners and enabling them to efficiently discharge their duties. He considered the attitudes of lower-tier prison officers to be of utmost importance for the efficient functioning of a prison.

5.3. Training in rehabilitation and counselling

Rehabilitation Officers and Counselling Officers are either directly recruited to the position or promoted through the in-service staff, such as the sergeants, based on their competencies and qualifications after an examination and an interview. Prison officers who have completed the required number of years in service as well as completed courses, such as diplomas in rehabilitation/ diploma in counselling, are given priority in this regard when applications are called for these positions. The Commission learnt that in recent times no Counselling Officers with adequate qualifications have been recruited externally. The Counselling Officers currently on the DOP staff are former prison officers that underwent minimal training in counselling and were appointed to undertake duties that involve psychological support to prisoners. It must be realised that psychological services and counselling form a key component of correctional policies since prisoners are a vulnerable group that require mental health support, both due to the conditions in prison and their circumstances prior to incarceration. As a result, appointing persons who do not possess adequate training and qualifications to undertake counselling services may be detrimental to the correctional objectives of the prison system.

The training period for newly recruited Rehabilitation Officers is three months, while the twenty-eight-day training will be provided to prison officers who were promoted from the lower ranks of the DOP, such as prison guards and sergeants. During this period, both categories of Rehabilitation Officers are provided with theoretical knowledge, including a module in counselling as well as practical training through prison visits and interaction with prisoners. Rehabilitation Officers mentioned that they are in need of further training in IT, language proficiency in English and Tamil as well as counselling. The need for further training in counselling arises due to the lack of Counselling Officers in the prison system, and as a consequence the Rehabilitation Officers performing the functions of a counsellor. Even though the Rehabilitation Officers are willing to counsel prisoners, they feel the need for further training in counselling to better respond to the needs of the inmates. As a Rehabilitation Officer stated, "We were trained to counsel during the basic training for two days. However, it is not adequate and we need professional training in counselling".

Training programmes have been organized by the CRTC on the prevention and control of STDs, human rights and specialized programmes for clerical staff and accountants. However, these programmes are conducted in the format of one-day workshops and prison officers feel the necessity for consistent, systematic and long-term training programmes.

During the course of the study, several prison officers, SPs and CJs expressed concern regarding the lack of human rights awareness among junior level officers, especially guards, sergeants and jailors, who are the officers most in contact with prisoners. This is because, as mentioned above, the CRTC conducts such awareness programmes only for higher ranking officers. The Commission, therefore, formulated a basic awareness programme for prison officers. Since guards, sergeants and jailors were the main targets of the training the Commission decided to conduct the programmes inside the prison on the monthly parade day of the prison. This ensured that in each prison the majority of the officers would be able to participate in the programme. These awareness programmes focused on fundamental rights, the SMRs, the mandate of the Commission and the role of prison officers. During the programmes, prison officers were able to also express the challenges they face on a daily basis in the course of discharging their duties. For more information on the awareness programmes held, please refer to the chapter Postscript: Follow up.

6. Salary and remuneration

Prison officers receive a basic salary and in addition over-time payments (hereinafter referred to as OT) subsistence, travelling and meal allowances (hereinafter referred to as BATA), as well Poya day and holiday allowances. The following table sets out the maximum take home pay for officers across the ranks. It must be noted that this is only to demonstrate what one officer would earn if s/he were given all the extra allowances as per their duty, and is not a reflection of the income of an average officer in any given month. For example, increments depend on the officer's years in the service and the maximum allowances used for calculation will be applicable only if an officer had been on night duty on cells, night duty inspection as well as escort duty for the maximum number of hours allowed during that month, which in practice does not happen.

Table 25.8 The salary scales of prison officers

Rank	Salary Code	Basic Salary (Initial Step)	Maximum Basic Salary*	Gross salary with Maximum Allowances**	Overtime Payment for 96 Hours***	Gross Salary****
CGP	SL 3 2016	88,000	(88,000+ 12 x 2700) = 120,400	124,400+4000	N/A	128,400
Commissioner	SL 1 2016	47,615	(47,615+ 10 x 1335 + 8 x 1630 + 17 x 2170) = 110,895	110,895 +4000	N/A	114,895
SSP	SL 1 2016	47,615	(47,615+ 10 x 1335 + 8 x 1630 + 17 x 2170) = 110,895	110,895 +4000	N/A	114,895
SP	SL 1 2016	47,615	(47,615+ 10 x 1335 + 8 x 1630 + 17 x 2170) = 110,895	110,895 +4000	N/A	114,895
ASP	SL 1 2016	47,615	(47,615+ 10 x 1335 + 8 x 1630 +	110,895+4000	N/A	114,895

			$17 \times 2170 = 110,895$			
CJ	RS 5 2016	42,425	$(42425 + 17 \times 775) = 55,600$	$55,600 + 4000 + 2000 + 1500 + 1500 + 750 + 500 \times 20 = 75,350$	N/A	75,350
Jailor Class I	RS 4 2016	37,030	$(37,030 + 24 \times 660) = 52,870$	$52870 + 4000 + 2000 + 1500 + 1500 + 750 + 500 \times 20 = 72,620$	N/A	72,620
Jailor Class II	RS 3 2016	32,790	$(32,790 + 7 \times 370 + 2 \times 495 + 25 \times 660) = 52,870$	$52870 + 4000 + 2000 + 1500 + 1500 + 750 + 500 \times 20 = 72,620$	N/A	72,620
Priso n Guard	RS 1 2016	29,540	$(29,540 + 7 \times 300 + 27 \times 370) = 41,630$	$41630 + 100 + 2000 + 1500 + 500 + 1500 + 750 + 500 \times 400 \times 20 = 55,980$	$55,980 + 96 \times 173.45 = 72,632$	73,132

**Gross Salary = Basic Salary + (Relevant Salary increment x number of years in service)
+ Allowances + Overtime Payments**

**** Gross Salary will be subjected to deductions including contributions to EPF /ETF

*** Overtime per Hour = Maximum Basic Salary/ [Total number of days per month (30) x usual number of working hours per day (8)]

** Allowances set out below are the maximum amounts allowed for a month for each category of prison officers entitled to the payment:

4000 = Night Inspections Allowance

2000 = Night duty in cells Allowance

1500 = Escort Allowance

1500 = Risk Allowance

500 = Good Behaviour Allowance

750 = Healthcare Allowance

100 = Electricity Allowance

500 x20 = Travel allowance for twenty days

*Maximum Basic Salary = Basic Salary + (Salary increment for the relevant step x no. of years of service)

Source: Public Administration Circular 03/2016

The annual increments on the basic salary were reported to be inadequate. The basic salary has a significant impact on other privileges enjoyed by prison officers, such as the ability to obtain bank loans in which the basic salary level plays a major role. The OT rate is also decided upon the basic salary of a prison officer. The general formula for the calculation of OT is (basic salary)/240. For an instance, if the basic salary of a prison guard is Rs. 20,000, the OT payment will be Rs. 83.33 per hour.

A prison officer is entitled to OT payments up to a maximum of ninety-six hours per month. However, as a consequence of the shortage of staff, prison guards and prison sergeants have to work multiple shifts, which exceed the allocated number of OT hours per month. A prison is allowed 1500 additional hours of OT as per the budget allocation of the DOP, and if the total number of additional OT hours exceeds the allocated 1500 hours, the OT hours will be divided pro-rata between the officers and a considerable number of extra work hours will be unpaid due to this restriction. Where payment of OT for out of prison duties, such as escorting prisoners is concerned, prison guards mentioned that they will be paid OT only for the number of extra hours during which they accompany a prisoner/s. For example, if a prison guard is escorting a prisoner to another prison, which requires multiple hours of travelling in addition to the regular shift, OT will be paid only for the first trip in which the officer accompanies the prisoner to the destination and not for the number of hours taken to return to the prison which is the duty station of the prison guard.

BATA payments are given to prison officers who are assigned court duty or escorting prisoners to hospitals, i.e. out of prison duties. Prison officers who are assigned to offices, such as the RC Branch, do not get an opportunity to earn OT and BATA payments as a result of the nature of work, which requires them to work only during the regular working hours, unless the CJ assigns yard duties or escort duties. The Ministry vested with the subject of Public Administration determines the BATA payment for employees of the public sector. In addition, an allowance of Rs. 200 per day for night duty up to a maximum of Rs. 2000 per month, and Rs. 150 for prison officers assigned with court duties up to maximum of Rs. 1500 per month⁹²⁰ are provided. Prison guards and sergeants are given an allowance for maintaining good discipline⁹²¹ and the allowance depends on the number of years completed in the service. Even though the prison officers are rewarded with an allowance of Rs. 500 per month for maintaining discipline, the allowance is observed to be inadequate.⁹²² The Commission was informed that prison officers receive Rs. 100 per month as electricity allowance.

It was observed that while officers who are single may be content with the salary, since they seemed to have fewer financial commitments, officers with families stated their salaries were inadequate to meet family expenses. This issue faced by the latter arises due to the number of dependents they have to support. Many prison guards stated they have obtained loans for various purposes, such as the construction of houses and renovations, which results in several monthly deductions being made from their salaries. Prison officers of the ranks of prison guard and sergeant fall within this category of officers. It should be noted that these ranks of officers execute the orders of the superiors with regard to the administration of prisoners and the daily functions of the prison, and are the officers primarily in direct and daily contact with prisoners. As a result, when their roles are not adequately incentivised, especially when they perform their duties in high-risk conditions, there is a direct adverse

⁹²⁰ Department of Prisons, Circular No 19/2014

⁹²¹ Department of Prisons, Circular No 19/2014(I), states that the conditions to receive the allowance for maintaining good discipline are; not having found guilty for an offence under the 1st or the 2nd schedule of Chapter XLVIII of the Volume II of Establishment Code prior to four and two years of receiving the allowance respectively or not having given a warning for misconduct prior to one year of receiving the allowance .

⁹²² Department of Prisons, Circular No 19/2014

impact on their treatment of and attitude towards prisoners when performing their day-to-day functions.

The physical danger to which prison officers are subjected is self-evident when the nature of their duty is considered. Prison officers are sometimes assigned to wards with prisoners considered high security risk along with whom the prison officers are locked in the cells. Furthermore, prison officers face an imminent risk to life especially when they are escorting prisoners, such as those who are part of organized crime who have rivals outside the prison. The ambush of a prison bus which was escorting a gang leader known as '*Samayan*' in 2017, resulted in the death of two prison officers and injured several other officers. It was brought to the Commission's notice that an underworld gang assaulted and stabbed a prison officer of GRP causing him severe injuries while the said officer was on his way home after duty. This assault was said to be a consequence of issuing a warning to one of the gang members inside the prison. Furthermore, according to the SP of GRP, several other officers of GRP and their family members have received threats from unidentified individuals, which had compelled such officers to lodge complains in their local police stations and request protection. Despite the kind of risks to which officers are exposed, the monthly risk allowance is only Rs. 1500 to which only prison officers assigned with Court duty are entitled.⁹²³

Due to the absence of a proper health insurance scheme and low salaries, when an officer requires medical treatment for a serious illness fellow officers collect funds from amongst themselves and contribute towards the cost of medical treatment. For example, the Commission observed a notice in NMRP requesting prison officers to make a contribution for an officer in need of an operation.

When an officer passes away all officers in the Department contribute Rs. 50 from their salary to compensate the dependents/family of the deceased. If they wish they could also contribute a larger amount. This is an immediate one-off payment made to the family of the deceased officer. The Prison Officer Welfare Division of the DOP informed the Commission that sometimes the respective prisons and the respective welfare committee provide additional support to the dependents in the form of monetary compensation, scholarships to the deceased officer's children, assistance to build a house, etc. The Commission was also informed that when an officer dies while on duty, the procedure to award compensation to the deceased's family under the '*Agrahara*' insurance scheme for the government employees takes a long period to be processed. As one of the jailors at WCP explained the risk to which they are exposed and the lack of protection:

"We work in terrible conditions. There is no such thing as a risk allowance. If an officer works in special cells, locked up in the ward with the prisoners for night duty, he is paid Rs. 200 for risking his life staying with dangerous prisoners. He can obtain maximum ten paid days. If the SP orders him to do twenty days night duty in a special ward locked inside the ward, he is only paid for ten days. It's as if on the remaining days he is volunteering. Officers who go on court duty, escorts etc. receive the same kind of BATA that is given to other

⁹²³ ibid

state employees. A state employee that travels in an airconditioned vehicle from one office to another office for work is paid the same as a prison officer travelling in a bus full of prisoners, whose rivals may be waiting in hiding to shoot at the bus and kill."

Where other forms of protection are concerned, a fund known as 'Suraksha' provides financial assistance for medical treatments of non-infectious diseases of prison officers. Considering the exposure to risk, it must be emphasized that a special life insurance scheme for prison officers is imperative. Furthermore, similar to military personnel and other law enforcement officers, prison officers should be provided a special scheme of allowances, or a standard scheme to compensate officers who are injured and the dependents of the officers who lose their lives on duty.

7. Accommodation and infrastructure facilities

"We know you can't fix everything in one day but if the Human Rights Commission can help us fix two things that will solve 60% of the problems – the severe staff shortage, and the issues related to transfers and officer quarters. If you can fix those, I will go to Jaffna or Trincomalee and work even tomorrow. I will not even complain about this salary. If I have quarters, I don't have to spend money on rent. We don't have to eat from outside. I will be able to eat with my family. Even if we don't have money to eat chicken every day, even if I have to eat *pol sambol* and rice in the morning – at least I get to eat it with my wife and children. I get to see my children go to school in the morning before I come to work. Then when I come to work, I will become a better person in front of the prisoners. Don't you think I want to be a better human being?"

Officer, Prison Headquarters

The infrastructure facilities for prison officers within the prison premises and officer quarters were said to require serious improvement. As a prison officer stated, "We work under unsatisfactory work conditions. The chairs have bedbugs inside them and the toilets of our restroom are not clean and hygienic".

The Commission was also informed of a shortage in officers' quarters, which means that when a low-ranking officer is transferred, he may not be able to take his family members with him due to the inadequate number of quarters available. For instance, according to an officer of the Prison Officer Welfare Division, there are only 152 quarters available for 983⁹²⁴ officers in prison institutions within Colombo and this number includes quarters to be allocated to all ranks of officers from the CGP to prison guards. Such separation from family is a reported cause of anguish for prison officers, and adds to the level of distress they feel while working in a stressful environment. The Commission was informed that many

⁹²⁴ Statistics of the Department of Prisons sent to the Commission on 15 February 2019.

problems faced by the prison system would be resolved if the aforementioned two primary issues are addressed, i.e. the shortage of prison staff and the lack of family quarters for prison officers. An officer of the Officer Welfare Division explained it thus:

“When an officer is transferred to Jaffna, there is no guarantee that they will get quarters and they do not receive enough rent allowance for the family to move with the officer. So, the family has to remain and the prison officer lives in the bachelor quarters. You miss your wife; you miss your children and constantly worry about them. Officers staying away from families become alcohol addicts, drug addicts; the entire family system breaks up. Then to sustain the addiction they resort to corruption. They exchange favours for prisoners. Then when something goes wrong, they are punished and lose the job.”

The SP of NRP at the time described the manner in which simple measures could be taken to create a more conducive work environment for officers, such as providing food at affordable prices. As he states below, this can lead to a change in attitude and the manner in which officers perform their duties:

“We need to focus on the welfare of the officers. I opened a buffet for all grades of officers for lunch and I reduced the price of a tea to Rs. 15 in the canteen. My objective is to change the attitude of the officers. I believe that if we change the work environment, the attitudes of the officers can be changed in a progressive manner.”

It was observed by the Commission that although senior prison officers of the DOP, including the SPs, Commissioners and the then CGP, were aware of the plight of prison officers and the struggles they faced on a daily basis to meet their professional and private obligations, policy makers may not be cognizant of the plight of lower tier prison officers and the impact it has on the management of prisons.

8. Psycho-social impact of stress on officers

In 2018, the MOH conducted a study on burnout among prison officers.⁹²⁵ The study was conducted with the participation of 1803 prison officers, which included Rehabilitation Officers and prison guards across thirty-three prisons. The three constituent elements of burnout were categorized as emotional exhaustion, depersonalization and diminished personal accomplishment:

- Emotional exhaustion occurs when a person is mentally exhausted to an extent where they are longer able to attend to his or her work effectively.

⁹²⁵ M.N.Y.F. Wijegunawardhane and H.M.J.P. Vidanapathirana, *The Burnout Among Prison Officers* (Ministry of Health, 2018)

- Depersonalization is a condition where the recipient of one's services is perceived as an inanimate object, and as a result the service provider tends to treat them in a less humane manner.
- Diminished personal accomplishment is a negative evaluation of oneself where a person is not content with what he or she has achieved in his job.⁹²⁶

The research revealed that 31.1% of prison officers suffer from burnout. It was further revealed that among the prison officers who participated in the research, 28.6% suffered from mental exhaustion, 26.9% suffered from depersonalization and 37.8% suffered from diminished personal accomplishment.⁹²⁷

Prison officers can be subjected to severe stress due to several reasons, such as extended work hours in a work environment associated with high risk, multiple shifts and inadequate break time during work. The research revealed several reasons for the burnout, which included the stressful work routine and difficulty obtaining leave when necessary. A higher degree of burnout was observed among officers who failed to properly interact with their co-workers and felt that the welfare facilities and work environment were unsatisfactory. The other groups that had high degrees of burnout were those who were not satisfied with their job, did not have a clear understanding of their responsibilities as prison officers or thought they were not receiving due respect from prisoners. The work conditions as described by an officer of WCP:

“Officers can't go on leave. Officers have to do night duty today and go on court escorts the following morning. Humans can't function like that. There is no release or relief from duty. It's very stressful work. We work under immense pressure. There are all sorts of prisoners here. Innocent ones, mentally ill ones, troublemakers, stubborn ones, addicts, underworld ones, politically influential ones. It's humanely impossible to handle all of them and not be angry or stressed – you have to be a saint.”

It was mentioned during interviews with prison guards that the officers consider themselves a category of prisoners who are voluntarily imprisoned in return for a salary. In particular, the monotonous nature of work also adversely affects the level of job satisfaction, particularly when, as was revealed during prison staff interviews, some officers have to work continuously for more than forty-eight hours in the closed environment due to the shortage of staff. It was also observed that the shortage of staff sometimes prevents officers from obtaining leave even though they are entitled to six days of causal leave per month and twenty-eight days of annual leave per year.

⁹²⁶ Denise Albieri Jodas Salvagioni and others, 'Physical, Psychological and Occupational Consequences of Job Burnout: A Systematic Review of Prospective Studies' (2017) 12(10) PLoS ONE <<https://doi.org/10.1371/journal.pone.0185781>> accessed 26 December 2018.

⁹²⁷ Wijegunawardhane and Vidanapathirana, 17.

The adverse impact of burnout resulted in difficulty sleeping, dissatisfaction with life, poor organizational commitment, short-term absenteeism and intention to change jobs.⁹²⁸ The Commission was also informed that the stressful work environment, coupled with the associated impact on their personal life, could cause prison officers to suffer from illnesses such as depression and anxiety, and even lead to self-harm.

The Officer Welfare Division informed the Commission that no support network or mechanisms, such as access to therapy and counselling, are available to prison officers. The importance of a counselling mechanism for prison officers cannot be emphasized enough. For instance, the officers of the Escort Branch, who are responsible for the escort of children, as directed by Courts, to probationary homes, remand homes and similar institutions, mentioned that they feel tremendous mental stress when dealing with children as well as prisoners with mental disorders and require training and counselling to handle these categories of detainees. This was described by SSP Senarathne Senanayake thus:

“Officers are suffering from mental and social issues. People who come to work in such conditions do not have a mentality to work with prisoners even though they have to spend hours with prisoners. The officers need counselling and currently there is no proper mechanism in operation for counselling. The officers should rest at least for eight hours to recover from the exhaustion from work. They take the work stress home and sometimes show aggressive behaviour towards their children and family. It is a vicious cycle of suffering. Prison officers need to be counselled in order to break this cycle.”

A jailor from NMRP expressed similar sentiments stating:

“Counselling for officers is a dire need. In any other state institution, officers are allowed to get one week leave if they need for a family function, for personal reasons, to recuperate, but in prisons we can't. We are treated as normal government employees and are paid like office workers but we work like the military and the police. We are an essential service, that's why we can't have a union. It's like they combined the disadvantages from all the state services and built the prison service. No risk allowances and risk benefits, no career development and training opportunities, no leave, no medical insurance for private care. People working in banks are entitled to medical insurance so in an emergency they can go to a private hospital and claim it. We receive nothing like that. I suppose people working in banks are risking their lives to serve the country more than us.”

⁹²⁸ ibid 20

It was observed that prison guards in work camps and open prison camps find the working conditions favourable and less stressful in comparison to officers serving in remand and closed prisons. A prison guard in POPC mentioned that:

“I don’t even feel like I am working in a prison because of the surrounding and the work environment.”

Similarly, a jailor of AOPC mentioned:

“AOPC is the easiest place at which I have worked. It’s very calm and quiet. Prisoners are also well behaved. No one tries to escape or do any funny stuff here. We can sit back and relax. Open prison camps and work camps are easier because there are no escort duties. No courts, not even clinics – because sick people can’t be sent here.”

On the contrary, a prison guard in WCP stated:

“When we report to duty in the morning we don’t know when we will get to go home. It is difficult to maintain a family life with the work hours and multiple shifts.”

It was observed that several factors contribute to the difference in the experience of the two prison guards. The prisoners: prison officer ratio in POPC is 4.5:1 and has only 363 prisoners, while the prisoners: prison officer ratio is 7.1:1 at WCP, which houses 3140 prisoners. The OPCs and work camps are more spacious compared to other categories of prisons and are located away from cities. Furthermore, these categories of prisons detain only convicted prisoners who are serving short sentences or serving the last few years of their sentence and are therefore considered trustworthy and low risk. Moreover, the prison guards are not assigned court duties. In contrast to remand prisons and some closed prisons, which house high risk condemned and life prisoners along with a large population of remand prisoners, the issue of overcrowding was not observed in the OPCs. Overcrowding therefore has an impact on the mental well-being of prison officers as well as prisoners, causing both groups to suffer in prison. Where prisoners may have the chance to leave prison one day, prison officers will have to work in such a stressful environment until retirement or they leave the service.

The frequency and the length of the breaks taken by prison officers during the workday have a significant impact on their level of stress. The officers who are on yard duty have a lunch break of only thirty minutes, which can be taken at a time convenient to the officers. Previously the time allocated for the lunch break was forty-five minutes and this was reduced to thirty minutes; it was mentioned during the interviews that even though the time allocated is adequate to have a meal, officers also need time to rest. A factor that contributes to the exhaustion of officers, particularly in regions which experience high temperatures, is the thickness of the material of the prison uniform and the cap which contributes to excessive sweating, dehydration and fatigue. This will be acute in the wards of some prisons, such as the Chapel Ward of WCP, because such buildings lack ventilation and are highly

humid due to the temperature and overcrowding. The attitudes of prison officers towards the prisoners can be affected by conditions such as fatigue.

The DOP organizes events such as social gatherings and sports events for officers. Each prison organizes an officer welfare party where families convene together. Officers often raise the money among themselves for this event. Since these are ad-hoc and sporadic events, the continuous provision of stress management mechanisms for prison officers needs to be addressed. It was suggested that the DOP introduce a mechanism to improve the talents of the prison officers in aesthetics, literature and other fields, which will consequently reduce work stress and the monotonous nature of the work.

The suggestions and the comments made to the Commission by the prison officers revealed that in addition to the work stress associated with the duty, the officers also feel that the service they render is not appreciated by the state or the public. Further, the inherent danger associated with their duty as prison officers appears to negatively impact their psychological well-being. Due to these factors, it was suggested that the service contract of prison officers should be converted to a twenty-two-year contract similar to that of the armed forces, which gives the former the option of retiring with full pension after twenty-two years of service instead of at the age of fifty-five. Furthermore, it was suggested that prison officers should be allowed a fixed period of leave annually to recover from the adverse psychological impact of work stress.

9. Gendered impact of prison work

“Female officers have a lot of pressure from their families. Even if I work here at the prison when I go home, I’m still expected to do the job of the wife and the mother. I still have to make sure there is food to eat. I don’t get a break because I spend the entire day with people who sometimes become very difficult. Sometimes the female prisoners we have to control are very aggressive.”

Prison Officer, Officer Welfare Division, Prison Headquarters

The Prisons service in Sri Lanka is predominantly male dominated. Both social and structural issues have contributed to limiting the number of female officers at the DOP, especially in uniformed ranks. The DOP cadre as illustrated in this chapter is gendered up to the rank of ASP, i.e. only a specific number of vacancies are allocated in each position according to sex. For example, the cadre provides for two female ASPs, three female Chief Jailors and four female Class I jailors and thirty female Class II jailors, of which two ASPs, two CJs, five Class I jailors and twenty Class II jailors are yet to be appointed according to the statistics of the DOP as at 15 February 2019.⁹²⁹ The gendered nature of the cadre is problematic and discriminatory, especially as the cadre does not allow for equal number of posts for the men and women in any given rank. Even though the ranks of SP, SSP, Commissioner and CGP are not gendered, the cadre only allows for two female ASP positions compared to forty male

⁹²⁹ Statistics of the Department of Prisons sent to the Commission on 15 February 2019.

ASP positions, thereby creating a structural limitation for the female officers to rise through the ranks to senior positions. Even though university graduates can apply as external candidates to the rank of ASP, Mr. Upuldeniya, Commissioner of Prisons, stated that DOP has not received any applications from external female candidates for the rank of ASP. This therefore indicates the lack of appeal of the prison services for women, as the societal norm is to view the work of prison officers to be hyper masculine and aggressive.

In addition, women face multiple social obstacles. Many female officers stated that one of their major concerns is the impact of their job on family life. For instance, they stated it is challenging to find adequate time to spend with their family and attend to the needs of their children, since in their families it is they who were mainly responsible for the care of the children. Furthermore, when prison officers with children are assigned to duty stations away from their residence, due to the extended hours of work, they find it difficult to attend to the education, security, health and the well-being of their children, which consequently contribute negatively to the psychological well-being of the officers. In addition, due to the lack of availability of officer quarters female officers, like male officers, could be forced to live apart from their families, when posted to different prison institutions. Given that due to social norms women are expected within their families to be primarily responsible for child rearing, female officers face an added pressure due to family separation.

The Commission was also informed that there is no formal procedure within the DOP to deal with complaints of sexual harassment. An incident of a female prison officer encountering a gendered form of discrimination, such as sexual harassment was brought to the Commission's attention pointing to the likelihood of specific challenges women officers face in the workplace. A female prison guard mentioned her experience of being subjected to verbal sexual harassment by a superior officer of the prison at which she served. When she expressed her displeasure about this in a particular manner, she claims she was transferred to a duty station which is far away from her residence. It was also mentioned that the DOP failed to remedy the situation or provide any support. Instead she was subject to multiple inconveniences. The female officer mentioned that due to the multiple financial and health issues faced by her family leaving the job or making a formal complaint against the senior officer was not possible as she was afraid of further reprisals.

10. The professionalization of the Department of Prisons

The need to professionalize the prison service was stressed by numerous officers, with the Maldives highlighted as an example of a South Asian country which recently professionalized its prison system. The process of professionalizing the service should commence with recruiting qualified and competent individuals. The candidates must have the capacity to work in a challenging and complex work environment with prisoners of various mindsets, as well as be patient, understanding and empathetic. When the Commission queried about the professionalization of the DOP from Mr. Upuldeniya, the then Commissioner of Administration/Intelligence and Security, he mentioned the need to change the mindset of some prison officers who believe that they can command and control the prisoners by merely

using a baton. Instead, officers must be trained in alternate non-violent methods of maintaining order in prison.

Mr. Upuldeniya stated that the prison service has to garner a level of respect, such as that is accorded to the Sri Lanka Administrative Service (SLAS), which will consequently create greater interest in the vacancies in the DOP, enabling the recruitment of the most suitable candidates. Furthermore, he suggested that a policy that supports the well-being of officers should be implemented, such as approving paid leave to encourage prison officers seeking further educational qualifications, such as postgraduate degrees or diplomas, which will consequently enhance the quality of the prison service and lead to greater professionalism.

11. General observations

The Commission observed that prison officers are assigned long working hours and multiple shifts as the DOP is grappling with a severe shortage of staff. Prison officers received inadequate remuneration to compensate for the strenuous and stressful functions they have to perform and this has resulted in lower job satisfaction and motivation, and has also created the room for corruption to flourish in the prisons.

It was also noticed there was lack of enthusiasm amongst the majority of prison guards in discharging their duties, which they seemed to perceive as a chore rather than being committed to rendering a service to prisoners and society. The Commission also came across numerous prison guards and Sergeants who exceeded a service period of ten years in that position, which illustrates that they have stagnated without being promoted.

One of the key grievances of officers is that they are not able to live with their families when they are transferred to prisons away from their hometown, as there is an inadequate number of staff quarters, and they cannot afford to relocate to another town with their families on their current salary. Furthermore, despite the distressing and demanding nature of their work environment and the impact it has on their personal lives, officers have little access to psycho-social support, such as therapy and counselling.

Another area greatly in need of reform is the training provided to prison staff. The knowledge of prison guards on human rights, international standards relating to the prisons and prisoners, and the national legal framework which can hold them liable for acts such as custodial violence, was observed to be limited. Since prison guards occupy the lowest tier of the hierarchy but are the most important in terms of close interaction with prisoners, they need to be made more aware of the laws and procedures designed to protect the rights of prisoners.

The Commission found that, despite the challenges in their work environment and the impact it has on their emotional wellbeing, most prison officers were found to be empathetic towards the plight of prisoners and the championed the need for reform of correctional policy. While there was a considerable friction in the relationship between prison officers

and prisoners, it cannot be denied that the conditions of prison officers' work environment are a factor that contributes to this fractious relationship.

26. Arrest and Detention

'Law and order exist for the purpose of establishing justice and when they fail in this purpose, they become the dangerously structured dams that block the flow of social progress.'

Martin Luther King Jr.

1. Introduction

A person's first point of contact with a country's criminal justice system is usually the law enforcement agencies⁹³⁰. A common issue that repeatedly surfaced in both interviews conducted with, and complaints received by inmates during the course of the study, is wide-ranging allegations of fundamental rights violations by the police that occurred during arrest and detention. Although the treatment of detainees by police was not initially a focus of the study, the number of allegations the Commission received from inmates, and the commonalities and patterns found in these allegations necessitated a discussion of this issue. Furthermore, the adherence of law enforcement authorities to due process safeguards can have an impact on whether persons are incarcerated as well as the length of time spent by persons in prison, as elaborated below.

During the study the Commission received a total of 160 allegations from inmates at all prisons visited around the country against the police, with complaints ranging from the issuance of threats, intimidation, framing false charges, detention without producing before a magistrate and forcing persons to sign confessions. In addition, eighty complaints regarding alleged police assault and ill treatment were also received. In the quantitative data, the number of police stations across the country at which respondents alleged ill-treatment had taken place is 301. Common allegations, which have been identified via inmate interviews and complaints, are – the failure to follow due process during arrest and detention and the use of coercion to obtain statements/confessions. In the analysis of these findings, the Commission observed several patterns, particularly with regard to the allegations made by male and female inmates, including foreign nationals and persons arrested and detained under the PTA.

Where PTA prisoners are concerned, the arrest and detention authorities also include the security forces. The PTA contains provisions that violate due process rights and are hence not in line with various international human rights standards, such as Article 9 of the ICCPR, which sets out procedural guarantees to be adhered to during arrest and detention, including the right to be informed of the reason for the arrest, the charges against a person, and to be

⁹³⁰ Law enforcement in Sri Lanka is within the purview of the Sri Lanka Police. There are a number of special operational units and divisions within the police, such as the counter-terrorism unit - which includes the STF and the TID ; and the crime-investigation unit – which includes the CID and the Police Narcotic Bureau.

promptly brought before a judge to decide the lawfulness of detention. Similarly, in national law, Article 13 of the Constitution protects a person from arbitrary arrest and detention, including the right to be informed of the reason for arrest and to be produced before a judge without delay.

To the contrary, the PTA allows arrest without a warrant and permits detention for an initial period of seventy two hours without the person being produced before in court⁹³¹ and thereafter for up to eighteen months on the basis of a detention order issued by the Minister of Defence⁹³², which is allowed by section 9 (1) of the PTA.

Article 13 of the Constitution of Sri Lanka requires that every person should be arrested according to the procedure established by law. Subsection 4 of the same provision stipulates that ‘the arrest, holding in custody, detention or other deprivation of personal liberty of a person, pending investigation or trial, shall not constitute punishment’.

2. The failure to follow due process during arrest

2.1 The failure to comply with arrest procedure

The failure of the police to follow due process during both arrest and detention was repeatedly mentioned by inmates in both interviews and complaints. The failure to follow due process commonly consisted of the failure to inform suspects of the charge/s against them and the failure to produce the warrant of arrest when requested. There are two types of offences set out in the CCP cognizable and non-cognizable offences. Cognizable offences are those for which a warrant is not required to make an arrest, such as conspiring to commit offences against the State, rioting, murder, kidnapping and extortion. Non-cognizable offences are those which require a warrant to make an arrest. Hence, the failure to produce a warrant of arrest for non-cognizable offences is a violation of the CCP, which sets out the procedure to be followed during arrest and detention.

Article 13 of the Constitution states ‘any person arrested shall be informed of the reason for his arrest’. Further, Section 23(1) of the CCP requires, a person making an arrest to inform the person to be arrested of the nature of the charge or allegation due to which he is arrested’.⁹³³ Additionally, Section 54 of CCP requires a person executing a warrant of arrest to notify the person being arrested of its contents, as well as to show him or her the warrant or a copy of the same, if requested by the person being arrested.

The Commission received several complaints from inmates who stated that they were not informed of the reason for their arrest by the police at the time of arrest. Most inmates alleged that they only came to know of the charges against them when they were produced

⁹³¹ Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979, s 7.

⁹³² ibid s 9.

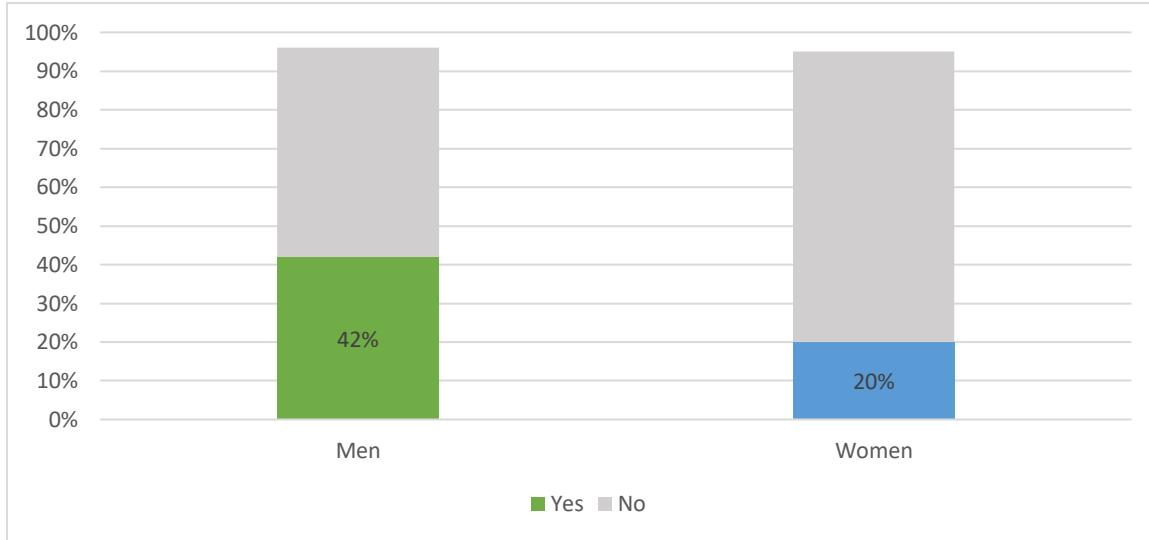
⁹³³ Code of Criminal Procedure Act, No. 15 of 1979, s 23 (1)

in court for the first time, or while they were being held in police custody. For example, a male inmate at BRP claimed that he was arrested by four police officers and taken to the police station where they forcibly obtained his statement and signature. He suspected that he had been arrested on a drug-related charge but, “[it was] only when I was taken to the court [that] I got to know that the charge against me is not possession of drugs but selling drugs”. Another inmate at BRP had a similar experience where he was taken into custody under a warrant when he was at home. He stated that, “it was only when the charge sheet was read at the court that I got to know that I had been charged under 54 [Section 54 of Poisons Opium and Dangerous Drugs Ordinance No17 of 1929] for possessing 2500 mg of heroin”.

The Commission also interviewed several foreign nationals who alleged that the police failed to follow due process when arresting them. For example, a foreign male remandee at CRP claimed that he was arrested at the airport when attempting to leave the country. At the time of arrest, he was shown his name on the warrant, but not informed of the reason for the arrest and the officers of the law enforcement agency that arrested him did not identify themselves to him. He later found out that he had been arrested by the CID for a cybercrime case. Other allegations by foreign nationals include a Pakistani male remandee at CRP who alleged that during his arrest he requested that his embassy be informed of his arrest, but the Narcotics Division denied his request, and a Filipino male remandee at CRP who alleged that the Harbour police arrested him without informing him of his due process rights. It should be noted that the law in Sri Lanka doesn't require the person to be informed of his/her due process rights immediately upon arrest. As foreign nationals are unfamiliar with the arrest procedure, local laws, the local languages, and have no local ties, the failure of the police to follow due process exacerbates their vulnerability to rights violations during the arrest and detention process.

The Commission also interviewed a female inmate at KRP suffering mental health issues who made serious allegations with regards to how she was arrested by the police. She claimed that she was arrested by the police in relation to the murder of her mother. According to her account of the arrest, “The police handcuffed me, they handcuffed my legs as well. I was dragged and brought.... They took me and having handcuffed me, put a chain handcuff to my legs. I still have the marks from the cuts from when I was dragged and taken, it hasn't faded. I still have the wounds.” The use of unnecessary or excessive force and methods of restraint on a person with mental health issues indicates the failure to identify and recognize the differing needs of vulnerable persons.

Graph 26.1 - Male and female respondents on whether they were ill-treated by the police after arrest



In our study, 42% of male and 20% of female respondents stated they were ill-treated by the police after arrest.⁹³⁴

The failure to follow due process during arrest is a pattern that emerged in the interviews of PTA detainees as well. Where persons arrested under the PTA are concerned, the impact of the failure to follow due process was exacerbated by the provision that allows for eighteen months of administrative detention without being produced before a judicial officer. The following section will illustrate the various violations of due process during and following the arrest process under the PTA that take place due to the long-term administrative detention which is allowed by law, which increases the vulnerability of persons arrested under the PTA as opposed to other laws.

2.2 The pattern of arrests under the Prevention of Terrorism Act

It is important to note that the Supreme Court of Sri Lanka in *Sunil Kumar Rodrigo v. Chandrananda de Silva*⁹³⁵ held that the right of a person to be informed of reasons for the arrest at the time of arrest, and the right of a detainee to be produced before a judicial authority within a reasonable period of time, have to be respected even in cases of detention under emergency regulations. This was reiterated by the Supreme Court in *Weerawansa v. The Attorney-General and Others* when it held that a person arrested under section 6 (1) of the PTA has a right to be informed of the reasons for arrest, and to a hearing by a competent court regarding the validity of the arrest as per Article 13 (2) of the Constitution regardless of section 9 (1) of the PTA, which allows detention by ministerial order.

⁹³⁴ For a detailed discussion on violence perpetrated by police, please refer chapter The Continuum of Violence.

⁹³⁵ [1997] 3 Sri LR (SC).

Nationally, there are other protections, such as the Presidential Directives on Protecting the Fundamental Rights of Persons Arrested and/or Detained issued by President Chandrika Kumaratunga, later re-issued by President Mahinda Rajapaksa on 7 July 2006 and re-circulated by former Secretary of Defence, Gotabhaya Rajapaksa on 12 April 2007 to the Heads of the Armed Forces and of the Police, which set out basic rules that have to be followed in relation to the arrest and detention of persons. The Directives state that 'that no person shall be arrested or detained under any Emergency Regulation or the Prevention of Terrorism Act No. 48 of 1979 except in accordance with the law and proper procedure, and by a person who is authorized by law to make such an arrest or order such detention'. The Directives require the arresting officer to:

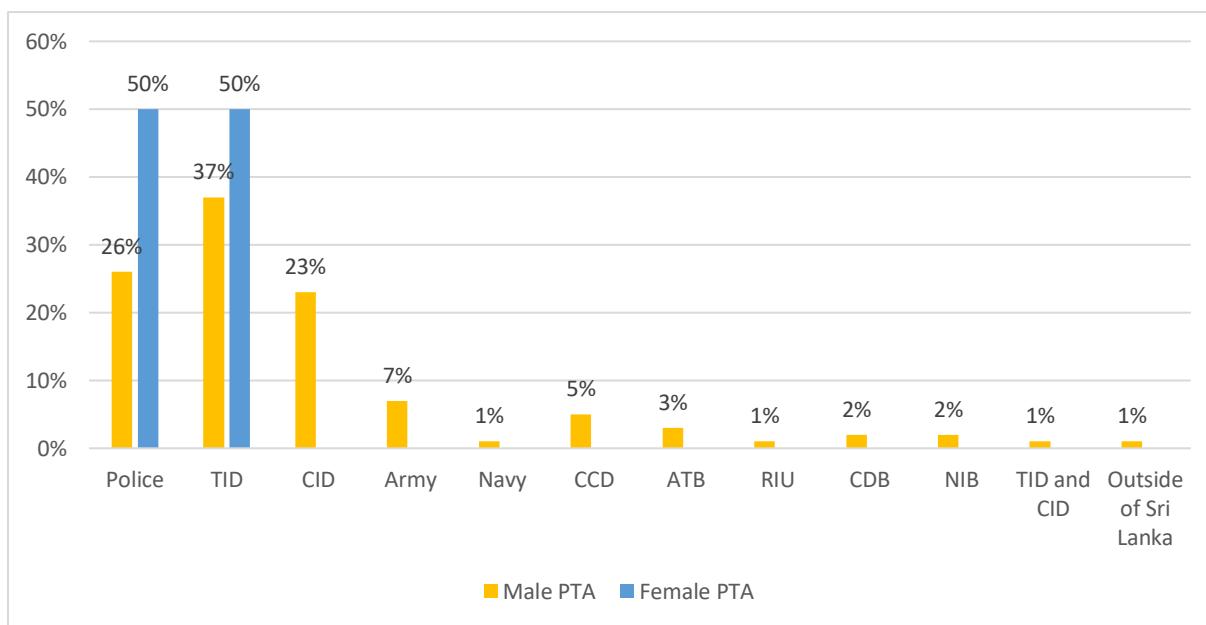
- Identify himself to the person being arrested or a relative or friend of such person
- Inform the arrested person of the reason for the arrest
- Allow the detained or arrested person to communicate with a relative or friend to inform of his whereabouts
- Record the statement of the person arrested or detained in the language of the person's choice
- Allow the Human Rights Commission access to any place of detention and have access to any person arrested or detained
- Inform the Human Rights Commission of every arrest and detention within forty-eight hours of the arrest

In addition to issuing arrest receipts to families, according to the Directives, authorities should also inform families of any change of the place of detention. In 2016 when a new spate of arrests took place the Human Rights Commission of Sri Lanka issued Directives on Arrest and Detention under the PTA⁹³⁶, which were re-issued by the President as Presidential Directives in June 2016.

A number of patterns were observed in the arrests undertaken as per the PTA. Where the arresting authority is concerned, according to the quantitative data set out below in graph 26.2, the majority of the male PTA inmate respondents, i.e. 37%, were arrested by the TID. Another 26% of male respondents said they were arrested by the police. There were only two women in the total sample, of whom one had been arrested by the police and the other had been arrested by the TID. 7% men stated they were arrested by the army while 5% had been arrested by the CCD.

⁹³⁶ Human Rights Commission of Sri Lanka, 'Directives Issued by the Human Rights Commission of Sri Lanka on Arrest and Detention Under the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979' (*Human Rights Commission of Sri Lanka May 2016*) <<http://hrcsl.lk/english/2016/05/27/directives-issued-by-the-human-rights-commission-of-sri-lanka-on-arrest-and-detention-under-the-prevention-of-terrorism-temporary-provisions-act-no-48-of-1979/>> accessed 19 November 2018

Graph 26.2 – The arresting entity



The general pattern observed is that PTA prisoners reported that the arresting authorities were in civilian clothing and did not identify the agency/ entity of which they were a part, or even if they identified themselves, they did not produce evidence of identification. In many instances, the identity of the authorities would only be uncovered subsequently, after the person was brought to a police station or CID/TID offices. Inmates stated that when they were taken away they were handcuffed and sometimes even blindfolded, as a result of which they were not able to identify if they were transported in an official vehicle or not. In a few instances they stated they were taken in an unmarked white van. The journey they stated could amount to at least six to eight hours during which they were not allowed to use sanitation facilities. Neither at the time of arrest nor at any point during the journey to the place of detention were the interviewees informed where they were being taken. When suspects were brought to the CID Office in Colombo, the officers would ask them to guess where they were, before informing them they were on the “4th Floor”.

There were a few patterns noted that were particular to PTA prisoners who were taken from their homes; these persons stated that the arresting authority would inform them that they were being arrested in relation to a certain case, or for being connected with the LTTE. In such cases, the family members would be aware that the interviewee was being arrested, but were not informed of the proposed place of detention. In cases where the arresting authority was identifiable, for instance, if they were accompanied by the local police who mentioned the police station to which they were attached, the family members would assume the person was arrested by the local police and detained at the local police station, but would not be aware when the detainee was subsequently transferred to another place of detention, such as CID/TID Colombo.

Alternatively, there were also PTA detainees who were taken from their homes who stated they were not informed of the reason for arrest but were only asked for their name and then taken by the authorities, for "further questioning/investigation". In such instances, there is no mention of arrest receipts being issued to the family, who would have no written record to present as proof when inquiring about the whereabouts of the arrested person. Such conditions of arrest do not adhere to due process standards that have to be respected during arrest. The inmates, who referred to it as 'kidnapping' or 'abduction,' described it as follows:

"They kidnapped me in a white van on suspicion of helping a black tiger. The police in civil kidnapped me from XX in XX and took me to a secret location and tortured me for a week. They were going to kill me but they told me if I sign a confessional statement, they will spare my life."

PTA Remandee, NMRP

A: "Four to five big people came in a blue van. They had pistols and AK 47 guns and they asked me to accompany them for a small investigation. I told them I can't. Then they took me forcefully.

Q: Did they inform you of the reason for the arrest when they arrested you the first time?

A: They didn't say anything. They just took me."

PTA Remandee, ARP

"I was kidnapped in a white van on XX/XX/2008. [They kidnapped me from] Soysapura. There were three people who were kidnapped including me. Seven or eight people came to kidnap me with weapons and pistols. [Later I learnt that] they were a unit headed by SSP XX. They were responsible for all the white van kidnappings in the North. This unit was under XX."

PTA Remandee, NMRP

Another pattern of arrest emerged from inmates who said they were being monitored by the police in the area prior to their arrest and were acquainted with them, as they had been questioned on previous occasions. These persons stated that prior to the arrest they were requested to come to the local police station to answer certain questions and then allowed to return home. One detainee stated he was also beaten during such an instance of questioning. These detainees stated that when they were arrested the police visited their home or work place and requested them to come for an inquiry, or they would be asked to come to the police station for an inquiry later that day. In such cases, they were also instructed to bring extra clothing with them since they would be required to stay for a few days. Hence, the detainees would usually inform their families that they were going away for a few days for a police inquiry, before willingly going to the police station. The family members would therefore be aware of the police station to which they were being taken, but

the Commission was not informed of an arrest receipt being issued to families. Most of the time these individuals would be taken into TID/CID custody from the police station and the family would not be informed of the transfer of custody or the new place of detention. One individual stated that the CID had tied some members of his family and an employee inside his house and didn't allow them to leave the house until he returned to his hometown and presented himself to the police for an inquiry.

"They told me come in the evening at around 1600h or 1700h and bring my clothes. In the evening around 1730h, I went to their office with my clothes. The officers were asked to bring me downstairs. There was a van on the road; I was told to get inside the van and I was taken to Colombo. In the morning they asked me, "do you know what place this is? It's the 4th floor." It is only then that I realized why I was taken there."

PTA Remandee, BATRP

"They said to me, if I don't tell them everything I know, they will take me to Colombo [CID office]. I repeatedly told them that I have no knowledge of the incident and that I wasn't involved in any aspect of it. They then said, they had no other choice but to take me to Colombo. They asked me to go home, inform my family and pack clothes for a week and accompany them. I went back and they followed me home. I packed my clothes, they informed my family that they were taking me to Colombo for an enquiry and that they will release me in one to two weeks time. They put me in their van and took me. That night itself we left to Colombo."

PTA Remandee, BATRP

The Commission also came across prisoners who stated they were arrested outside their homes with common locations of arrest including places of employment and IDP camps where persons who were displaced during the last stages of the armed conflict were held/resided during the years 2007-2009. The families of detainees in such instances would learn of the arrest only when the ICRC visited the place of detention and thereafter informed the family. As described by a PTA remandee from NMRP:

A: "While I was travelling in my bike I was blocked and taken away.

Q: why did they arrest you?

A: PTA suspect

Q: did they tell you that when they arrested?

A: No. nothing. They just hit my bike with their vehicle. They came in a pickup and Hiace van and blocked me in from both sides. Around sixteen people were there. They caught me, hit me and took me away."

This was echoed by another PTA Remandee from NMRP who said:

A: "Then they detained me in Joseph Camp. I was detained in an underground bunker. Not only I, many people. [I was there for] around one month.

Q: Did your family members know that you were detained at Joseph Camp?

A: No. they didn't even know that I was arrested."

Some PTA prisoners also reported that prior to the arrest that led to imprisonment, they were abducted by security forces, not police, once, late at night in a white van, and taken blindfolded to an unknown place for a period of three to four days and thereafter released. A PTA convicted prisoner at NMRP described it thus:

A: "One night they abducted me. The navy, around twenty to twenty-five of them.... It was early morning, 1400h-1430h. I was sleeping. They came, held my neck and handcuffed both my hands and legs and took me away.

Q: Where did they take you?

A: I didn't know. They blindfolded me and took me to a hut like place, something like a home. I think it's probably close to XX sea coast. They beat me. I said I don't have anything to do with this. Then they beat me up again. They took me around and searched some places. They weren't able to find anything. Later they dropped me off where I was picked up. The owner of the place I was working at knew I was abducted in a white van."

A common pattern that was observed in the case of all detainees is that they were transferred to different places of detention, about which they stated their families were not informed, which would result in family members travelling from place to place, for instance, Jaffna to Kandy, if in the case it was the Kandy police that arrested the detainee, only to find that the person has been transferred to CID/TID custody in Colombo. As such, many inmates would be deprived of contact with their family and legal representative while in police custody. Additionally, this also creates space for torture and enforced disappearances. As a male life PTA prisoner at NMRP stated:

Q: "When you were arrested in 2009 did your family members get to know about your arrest?

A: They did not know. They only got to know after I was remanded in the Colombo prison. That was in 2012."

3. The failure to follow due process during detention

3.1. Period of detention exceeding twenty-four hours

One of the most common complaints made by inmates was that they were held in police custody for longer than the stipulated twenty-four hours. According to Section 37 of the CCP, an officer should not detain or confine a person arrested without a warrant in custody for a period exceeding twenty-four hours, exclusive of the time required for the journey from the place of arrest to the Magistrate⁹³⁷. Furthermore, Section 36 of the CCP requires officers to produce the person arrested before a Magistrate 'without unnecessary delay'.⁹³⁸

Despite this, there are numerous allegations by inmates of being detained for an average of two to three days in police custody, without being produced before a Magistrate. For example, in one particular case, an inmate from POPC who was convicted for a tax offence alleged that he was arrested by the CID and kept in police custody for twenty-one days. Significantly, this particular inmate claimed that during the twenty-one days he spent in police custody, he, and four other people arrested along with him, were moved by the CID to different locations to prevent detection by the ICRC, who were attempting to check whether they had been arrested, and if so, on their wellbeing. Further, he alleged that he was not allowed to contact his family members while in police custody, and that his family was informed of his arrest by the ICRC after twenty-one days.

In another instance, an inmate serving a death sentence at MCP stated he was kept in police custody for seven days, and alleged that the police later altered the time of arrest in the documents provided to the courts to conceal his arbitrary detention. The alteration of the record of arrest is another transgression that has been alleged by several inmates during the study. This also indicates the lack of safeguards in place to prevent the alteration of information by police, and highlights the need for greater judicial scrutiny of arrest procedures.

In the case of PTA detainees, although the law allows for administrative detention of eighteen months, it was found that those who were taken into the custody of the state weren't issued a detention order within seventy two hours, nor were they produced before the Magistrate, thereby violating even the provisions of the PTA. For example, persons who surrendered to the Army at the end of the armed conflict in May 2009, and were detained en masse in empty school buildings or detention camps, were later arrested from and taken to CID/TID custody or Boossa detention center from these camps. However, during the period of post-surrender to the military and pre-formal detention DOs were not issued, nor were they produced before a Magistrate, thereby calling into question the legal basis of their detention. Hence, the total period of deprivation of liberty could potentially exceed the stipulated maximum period of eighteen months on a DO under the PTA, as detainees would spend many months

⁹³⁷ However, there is an exception to this rule. Prevention of Terrorism Act (No. 48 of 1979), s 7(1) states "any person arrested... may be kept in custody for a period not exceeding seventy-two hours and shall... be produced before a Magistrate before the expiry of such period."

⁹³⁸ Code of Criminal Procedure Act, No. 15 of 1979, s 36

in the control of the armed forces, before being brought within the formal detention system within the purview of the police. According to the interviewees, the authorities would calculate the eighteen months only from the point at which these persons were moved to a formal place of detention, thereby resulting in the period they were held at schools etc. not being accounted in the total period of detention.

Such detention, which contravened existing legal provisions, creates space for the violation of the rights of detainees, as illustrated by the narratives of interviewees, who were reportedly subject to torture and cruel inhuman degrading treatment and made to suffer harsh conditions. As one inmate from ARP described it:

“Then we were detained at Rambaikulam Vavuniya Maha Vidyalaya for ten days where we were severely beaten by the Army using broomsticks at the Army camp. I will never forget it. In both schools there were around two thousand individuals. There was a large number of individuals and inadequate space for everyone to sleep peacefully. We were afraid to go to the toilets, since the Army officers would be on top of the toilet roof with a broomstick; as soon as we enter the toilet we would be beaten on our back and head. The squatting toilet would be overflowing and they purposefully kept it that way instead of clearing the overflow in order to make us suffer. Once I kept my feet in the toilet and the overflow covered from my heels to half a feet. We couldn't bathe there, we would take two soda bottles of water and inside the toilet we were allowed to stay only for two to three minutes.”

The failure to adhere to legal provisions which stipulated the period of detention, places all detainees, not only those arrested under the PTA in a vulnerable position where their rights can be violated. In this context, administrative detention places those arrested under the PTA in a position of increased vulnerability as discussed in the section below. This also makes them vulnerable to providing confessions due to coercion, which in turn leads to extended periods of incarceration.

3.2. Administrative detention under the PTA – the use of Detention Orders

Judicial control and oversight of detention is required to ensure the fundamental rights of a person in detention are preserved, and failure to do so increases the risk of the detainee being subject to ill-treatment during detention. In this regard, Article 9(4) of the ICCPR stipulates that ‘anyone who is deprived of liberty by arrest or detention shall be entitled to take proceedings before a court to decide without delay on the lawfulness of his detention and order his release if the detention is not lawful’. Article 13 (2) of the Constitution has a similar provision.

The requirement to be promptly presented before a judge to bring the accused under judicial control was emphasized in General Comment No. 35⁹³⁹ of the Human Rights Committee which also states that, aside from imprisonment sentences, ‘the decision to keep a person in any form of detention is arbitrary if it is not subject to periodic re-evaluation of the justification for continuing the detention’. Without judicial scrutiny of the need to continue depriving a person of their liberty, and examine whether there is sufficient evidence or grounds to believe continued administrative detention will assist in bringing new evidence to light, there is a risk that an individual may be detained arbitrarily without reasonable grounds to justify detention.

General Comment No. 29 issued by the Human Rights Committee states that detainees must be brought before a judge to deliberate the legality of the decision, which is a non-derogable principle. This reaffirms prolonged pretrial detention that is not subject to judicial oversight and threatens the fundamental rights of an individual is not compatible with national and international legal and judicial standards, even during a state of public emergency.

According to Section 9 of the PTA, the Minister of Defense can issue a detention order (DO) where there is ‘reason to believe or suspect that any person is connected with or concerned in any unlawful activity’. Since a DO can be issued for a maximum of three months at a time, and then extended every three months, with the aggregate period of detention not exceeding eighteen months, it effectively allows a person to be detained without being produced before a judge for up to eighteen months. Hence, a periodic judicial review to ascertain the continued need for the deprivation of liberty cannot be conducted. An exacerbating factor is the prohibition of challenging the lawfulness of a DO issued by the Minister of Defense in a court of law.

It should be noted that the Supreme Court case of *Weerawansa v. AG* cited above reiterates that even where arrest under the PTA is concerned the suspect has to be produced before a judicial officer, as the judicial officer ‘would be able, at least, to record the detainees complaints (and his own observations) about various matters: such as ill - treatment, the failure to provide medical treatment, the violation of the conditions of detention prescribed by the detention order and/or relevant statutes and regulations, the infringement of the detainees other legal rights qua detainee, etc’.

The patterns observed in the interviews are that PTA prisoners were held in various places of detention, for months at a time, on a detention order, without being produced before a Magistrate. The detention was extended by the arresting authorities without being subject to independent scrutiny, as the Minister would comply with their recommendation without undertaking an independent assessment.

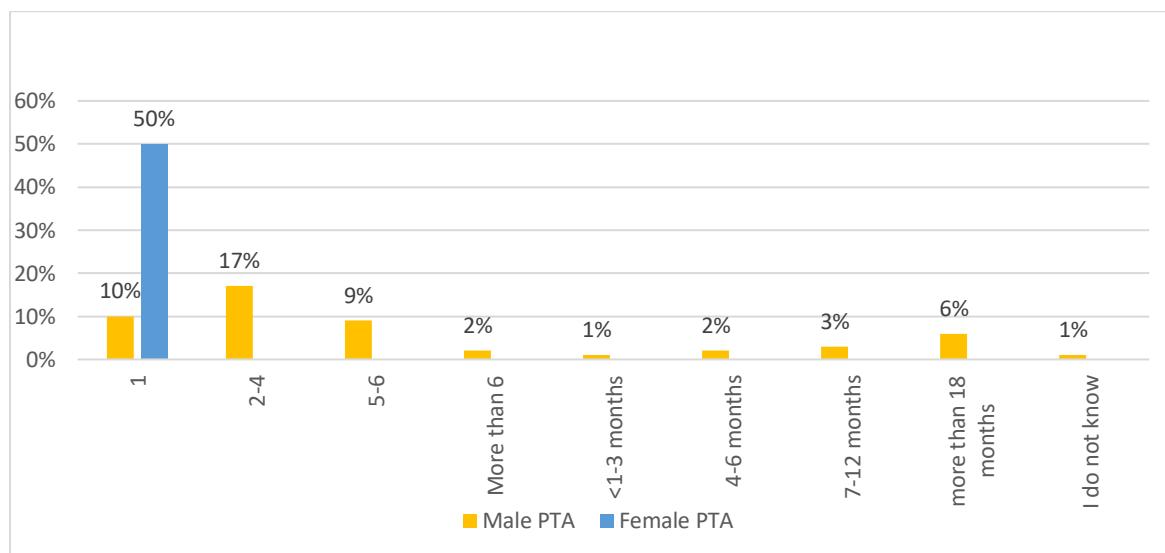
Arresting officers are required to issue a copy of the DO to the detainee or his family members. While some PTA detainees reported they duly received copies of their DO every three months, many PTA detainees reported they did not consistently receive copies of each

⁹³⁹ UN Human Rights Committee, *General comment no. 35, Article 9 (Liberty and security of person)*, 16 December 2014, CCPR/C/GC/35.

DO, and to date some have not seen the DOs which authorized their detention. An inmate from NMRP informed the Commission that he had been detained for almost nine months in CID and TID custody in Colombo but had never received a DO. The same inmate stated he was hidden from visiting ICRC officials while in CID custody, which he alleges was an attempt to hide details of his detention from his family.

Quantitative data gathered from PTA detainees indicate that most detainees stated that they were 'given' at least one DO for the period of their administrative detention. However, it must be noted that the respondents did not differentiate between whether they were given a copy of the DO, whether they saw their DO, whether they were told they were under DO or whether they assumed they were under DO. This is demonstrated by the graph below.

Graph 26.3 – Male and female respondents on the number of detention orders that were issued⁹⁴⁰



It must be noted that although the answer to the question of how many DOs a person was issued was open ended, the respondents were expected to mention a numeral. Instead, many respondents stated the time period they were reportedly held under a DO which didn't necessarily enable a calculation to be made about the number of DOs issued since it could not be assumed a DO was issued for the entire period of detention.

6% of male respondents stated that they were 'given' DOs for more than eighteen months, which indicates that they were held unlawfully past the maximum period of detention allowed under PTA, even with a DO. Yet, this is no indication as to whether they have actually seen or received a copy of any valid DOs for their period of detention. 50% of female respondents who stated they were 'given' a DO consist of one female PTA inmate who

⁹⁴⁰ The number of DOs issued in their responses does not necessarily mean that they saw this number of DOs or is equal to the number of DOs of which they received a copy.

answered the question. The majority of the male PTA inmate respondents had been ‘given’ two to four DOs. 10% male respondents stated they had been ‘given’ one DO and 9% of the respondents had been given five to six DOs.

Unauthorized places of detention

Of the international protections against unauthorized detention and its resultant violations, General Comment No: 4 on Article 7 of ICCPR (hereinafter referred to as GC 4) states that ‘to guarantee the effective protection of detained persons, provision should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends. Provisions should also be made against incommunicado detention’.

In national law, the International Convention for the Protection of All Persons from Enforced Disappearance Act No. 6 of 2018⁹⁴¹ (hereinafter referred to as the Enforced Disappearances Act) states that no person shall be held in secret detention and a detainee shall be ensured access to legal representatives, relatives and entities such as the Human Rights Commission. The Act also states that records shall be maintained of:

- The identity of the person deprived of liberty,
- The date, time and place where the person was deprived of liberty
- The identity of the authority in charge
- The grounds for the deprivation of liberty
- The place of deprivation of liberty
- Information relating to the state of health of the detainee, and
- The date and time of release or transfer to another place of detention.

Section 16 of the Act confirms the right of access of the relatives and legal representative of the detainee to the information mentioned above.

In general, administrative detention that is not subject to judicial review and oversight, and in particular the provisions of the PTA, create space for the detainee to be held at unauthorized places of detention, which in turn creates space for ill-treatment of the detainee and the possibility of obtaining confessions through coercion.

Table 26.1– Places at which male and female PTA respondents were held

	Male PTA	Female PTA
TID Boossa	37%	50%
TID Colombo	34%	50%
CID Colombo	26%	50%

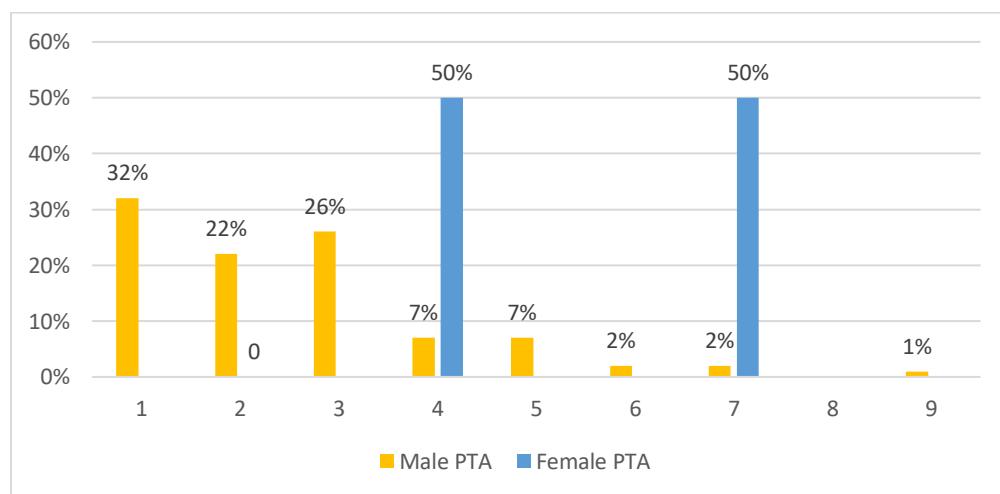
⁹⁴¹ International Convention for the Protection of All persons from Enforced Disappearance Act, No. 5 of 2018, s 15.

Kandy Police	8%	
Joseph Camp	5%	
Katugastota Police	3%	
Vavuniya Army Camp	2%	
Vavuniya Police	2%	50%
TID Kandy	2%	
CID Chettikulum	1%	
CID Vavuniya	1%	
CCD	1%	
Somewhere in Colombo	1%	
Pettah Police	1%	50%
Dehiwala Police	1%	
Mt. Lavinia Police	1%	
TID Kilinochchi	1%	50%
Wattala Police	1%	
Colombo Port Police	1%	
Minneriya Army Intelligence Camp, Giritale	1%	
BIA	1%	
Port Police	1%	
Unknown location	1%	
Wellawatta Police	1%	
Galagedera Police	1%	
ATB, Asgiriya, Kandy	1%	
Sri Lanka Ports Camp, Modara	1%	
Seruwila Camp	1%	
Menikhinna Police	1%	
TID Jaffna	1%	
Keselwatta Police	1%	
Omanthai Camp	1%	
NIB	1%	
Vavuniya Buddhist Temple	1%	
Secret room, Mannar Police	1%	
Karandeniya Police	1%	
Welikanda Camp	1%	
Hanguranketha Police	1%	
Uppural Camp	1%	
Pattiyadi Camp	1%	

Alioluwa Police	1%
Rambaikulam Rehabilitation Camp	1%
Manipai Police	1%
Tamila Maha Vidyalaya [school]	1%
Nellikulum Police	1%
Navy Camp, Mannar	1%
Navy Camp, Fort	1%
Outside of Sri Lanka	1%
Unknown location, Anuradhapura	1%
Underground, CSU	1%
Old Telecom Tower, Uppkulum, Mannar	1%
TID Chaithya Veediya [former TID office in Colombo]	1%
Vellaveli Police	1%
Balagolla Police	1%

Table 26.1 above sets out the answers provided by respondents about their places of detention. As corroborated by qualitative data, the quantitative data demonstrates that the highest frequencies are 37% at TID Boossa, 34% at TID Colombo, 26% at CID Colombo, 8% at Kandy Police and 5% at Joseph Camp. Since there were only two female respondents their answers are indicated as 50%. However, 50% answers indicate that both of them were not held at the same place of detention. It should be noted that many respondents stated that they were held at many unknown and unauthorized places of detention, such as unknown locations, underground locations, Buddhist temples, schools and a telecommunication tower.

Graph 26.4 - The number of places at which male and female respondents were detained



Quantitative data illustrates that a majority of male PTA prisoners were held in one place of detention, while 26% have been held at three places of detention, and 22% were held at two places of detention. Of the two women that completed the questionnaires, one has been held at four different places of detention while the other was held at seven places of detention. It should be noted that of the male respondents, 2% has been held at six places, another 2% has been held at seven places and 1% has been held at nine places of detention.

PTA prisoners stated that soon after they were arrested, they would be taken for interrogation to unknown, unauthorized and non-descript locations, such as old, run down houses and empty derelict buildings, before being placed in a police station or CID/TID custody. No documentation or record of the detention in an unauthorized place would be maintained and the detention period would be recorded as commencing after they were brought to an authorized place of detention. When they were brought into formal custody detainees stated they were asked their personal details, such as hometown and family contacts but no personal details and information were recorded at the unauthorized places of detention. As a PTA remandee from NMRP who was abducted from his work place by a group of unknown men and detained for a week in an unknown secret location in the Colombo area described it:

Q: "Did you know anything about the secret location?

A: Not exactly, but after speaking with the other inmates there [at TID] they told me it could be a house near Kirulapana police. It took about an hour's ride from Kotahena to reach to that location. They tied my legs and hands and laid me down on the seat. Near the location there was a loudspeaker. From the loudspeaker it took about two minutes' drive to that location. The building was shaped like a house. After I came into the prison many other inmates told me that such similar abductions [and being kept in a secret location] had also happened to them and told me it must be near Kirulapona police."

An inmate from WCP stated he was arrested in his hometown while returning home from work, by members of the Army, and was taken to a forest with four other people where he was beaten for five hours and then taken to a Sri Lanka Army camp nearby, before being handed over to the police that same night. He stated:

"They took me [to the camp] in a jeep at 1800h. They put tires on me and four to five officers sat on top of the tires. They took me from camp to camp and finally at 2300h handed me over to the police."

Detainees reported of being subject to torture in unauthorized places of detention by the same entities that arrested them, while being asked about their alleged involvement in criminal activity. However, no confessions would be obtained at such places, and detainees would be held at such places for a few hours after which they would be taken into official police custody at a police station or taken to TID/CID Colombo. Some inmates also stated they would be taken from police custody to the unauthorized place of detention for a few

hours every day for interrogation and then returned to the formal place of detention. Detainees stated that ill-treatment and interrogation took place in unauthorized places of detention, but formal statements would not be recorded there. A male PTA remandee from ARP described it to the Commission thus:

"The investigation unit of the Kandy police came to take me. From Vavuniya they took me to a temple. There was a huge Buddha statue and I was detained there. At night they handed me over to be detained in a cell at Vavuniya Police. Early morning at 0530h they would take me out from the police station and bring me to the temple...they would threaten me saying that 'we will beat you up and keep you detained here'. Then once I refuse to talk they would start beating me up. Then again they would come on the second day and would ask me: 'aren't you worried after getting beaten up yesterday? Do you want to get beaten up today as well?"

Detaining persons at unauthorized places of detention would delay producing the person before a judge within seventy-two hours or the issuance of a DO, which increases the risk of the person being subject to ill-treatment and torture in custody. This also means their arrest would not be recorded and hence they would face difficulties proving they were in state custody during that period, which could adversely impact their defense if/when they were indicted. Being held in unauthorized places of detention prevents detainees from being accessed by family members and entities such as the Human Rights Commission and ICRC. As such, the detainee is effectively held incommunicado detention during this period of time, which could amount to enforced disappearance as per the Enforced Disappearances Act⁹⁴². As per the narratives of persons who were detained at unauthorized places of detention, the pattern that emerges is that the purpose of being so detained was to inflict ill-treatment and violence on a detainee in order to intimidate them to provide a confession.

Contact with family during detention of PTA prisoners

Principle 16 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment⁹⁴³ states that the arrested detainee is entitled to notify or require the competent authority to notify members of his family of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody. The responsibility to notify the family members of the detainee is that of the arresting authority, and cannot be delegated to visiting external organizations, such as the Commission or the

⁹⁴² Enforced Disappearance Act, No 5 of 2018, s 3 'Any person who, being a public officer or acting in an official capacity, or any person acting with the authorization, support or acquiescence of the State - (a) arrests, detains, wrongfully confines, abducts, kidnaps, or in any other form deprives any other person of such person's liberty; and (b) (i) refuses to acknowledge such arrest, detention, wrongful confinement, abduction, kidnapping, or deprivation of liberty; or (ii) conceals the fate of such other person; or (iii) fails or refuses to disclose or is unable without valid excuse to disclose the subsequent or present whereabouts of such other person, shall be guilty of the offence of enforced disappearance.'

⁹⁴³ UN General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, 9 December 1988, Resolution 43/173, principle 16.

ICRC. Principle 19⁹⁴⁴ states a detainee has the right to be visited by and correspond with their family. GC 4 states that 'protection of the detainee also requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members'.

As recommended in the directives issued by the Human Rights Commission on Arrest and Detention under the PTA⁹⁴⁵, any person arrested shall be allowed to communicate with a family member, relative or friend to inform them of his whereabouts if the person is arrested when not in presence of family or relatives.

The interviews illustrated that these legal protections were observed in the breach, as family members would not be informed when the detainee was transferred to and held in multiple detention facilities, including unauthorized places of detention for months on end on a DO. Some inmates stated that the investigating authorities informed their family members about the detainee's whereabouts after many months in detention had lapsed. This would usually be carried out when the suspect was brought into TID custody. PTA detainees stated that visiting officers of ICRC would pass messages to their families and inform their families of the place of detention. They also narrated instances when they were hidden from visiting ICRC officials to prevent being detected. A remandee in PCP stated, "my family didn't know I was taken. When ICRC visited and found us, they informed our family." A remandee from NMRP who had a similar experience stated:

"I was abducted on XX June 2008. They were hiding me from ICRC. On the fifth floor they have a specific room where tortured people who they wanted to keep hidden were detained. They (the ICRC) fought with the CID and found me. Only on 10 August 2008 the CID officially informed my family that I was under their custody."

This was echoed by a PTA remandee at NMRP who said:

"I was abducted. When news broke out about my abduction in XX, my family started to search for me. They found me only three months after I was detained at CID. ICRC had to fight to see me, because [CID] was keeping me hidden from them. [CID] denied that I was there but Mr. XXX fought with the CID to see me. That's how my family got to know about me."

Failure to inform the families of detainees about their place of detention subjects the families to many difficulties. For instance, if families are not informed of the transfer then they will be forced to travel from the North to Colombo and then to Boossa or vice versa in search of the detainee. Given most of these families face severe financial difficulties, sometimes they

⁹⁴⁴ ibid principle 19 'A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.'

⁹⁴⁵ Directives Issued by HRCSL, s 2.

would have no funds to return home after travelling to the place of detention. Further, since family visits were allowed to visit detainees at TID Colombo only on Sundays, if families, who were unaware of this rule and visited on any other day they would not be allowed to see the detainee despite having travelled long distances. When provisions, such as personal hygiene products, were not provided by family members, detainees would receive soap and other items from the officers or visiting ICRC personnel.

4. Obtaining statements/confessions through coercion

Inmates who claimed that they were imprisoned based on false charges made by the police, described numerous ways in which the police reportedly obtained fraudulent confessions and statements from them. One of the common allegations made by inmates is that the police ask them to sign their name on a blank piece of paper, onto which a statement confessing the suspect's involvement in the offence was later written or typed. Inmates claimed that when they resisted or refused to provide confessions, they were forced to do so, either by way of threats or physical assault.

Alleged threats made by the police include threatening they would deny bail to suspects, threatening to imprison them on remand for long periods of time, and threats to their personal safety, as well as that of their families. For example, the Commission received a complaint from an inmate at PCP who was arrested on suspicion of committing a murder. After being arrested, he stated he was taken to the deceased's house where he was assaulted by the son of the deceased while a police officer looked on. He was reportedly later taken to the police station and asked to sign a blank page on a book, which turned out to be a statement confessing his involvement in the murder. Similarly, a Nigerian inmate at CRP who was arrested by the CID on suspicion of ATM card fraud alleged that he was assaulted continuously when he refused to sign the statement written in English by the CID. According to his account, the statement was inaccurate as it entailed him accepting his involvement in the fraud. A convicted inmate at PCP claimed that he "was kicked by policemen twice on the rear and on my genitalia because I refused to sign a form which was given to me". Another male inmate at WCP alleged that police officers noted his statement and coerced him to sign it by assaulting and threatening him. According to this inmate:

"Then they asked me to sign [the statement] after writing [it]. Then I told them that I wanted to see that [the statement] when signing it. Then they told me to do whatever they say or they will hit me if I refused ... But then again they didn't give it to me to see it [the statement]. They kept a hand on the paper and asked me to sign here and there. When I tried to see above, they hit me. I had no option other than to sign. There was no one to help me either. Then they said me that I can go home if I sign. So, I quickly signed wherever they showed."

Inmates also alleged that they were assaulted by the police in order to coerce them into accepting the charges against them. An inmate at BRP who was arrested for being possession of stolen goods claimed that:

"They cuffed me again and tied me down to a table like this and poured petrol over me and hit me with a wooden pole and told me to accept all the charges if not they won't let me go or that even if I go out they won't let me be in peace and that they will put a bomb [plant a bomb in his possession]."

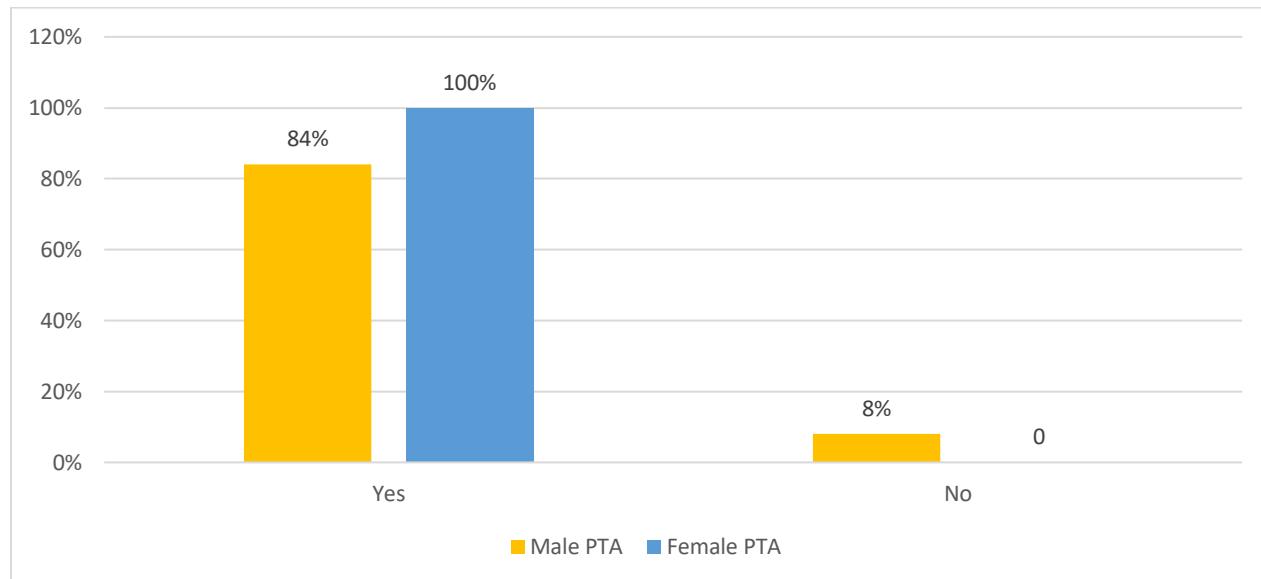
Another common complaint the Commission came across during the study, is that suspects are forced to sign statements that they could not read, either because they are illiterate or because it was written in a language they did not understand. This was particularly evident in the cases of Tamil inmates and foreign nationals. A Tamil inmate the Commission interviewed at JRP claimed that he was arrested for making and being in possession of illicit alcohol (*kasippu*). The inmate claimed that he was asked to sign a document written in Sinhala but that he didn't understand what was written in the document, and that it was not read out to him by the police. He became aware of the contents of the statement only when he was produced in court.

4.1. Confessions in the context of prisoners under the Prevention of Terrorism Act

The majority of prisoners arrested under the PTA who were interviewed by the Commission stated they were forced to sign confessions, by being subject to torture, inhuman and degrading treatment at some point during the administrative detention period, before being produced before a judge. Confessions are admissible under the PTA if given to a police officer of the rank not below that of an Assistant Superintendent of Police. Since many PTA prisoners interviewed had been remanded, indicted or convicted on the basis of a confession alone, the torture and resultant confession has directly contributed to their long-term incarceration. In order to illustrate the impact that the confession, which interviewees stated had been obtained through torture, had on their pre-trial detention and incarceration, this section will set out the patterns observed in the interviews with regard to the means and methods of obtaining confessions through torture. The detailed discussion on the process through which the confession was obtained aims to illustrate how the different elements of this process, for instance, subjecting the detainee to torture at an unauthorized place of detention, cumulatively enable the confession to be obtained. This in turn will highlight the gaps in existing safeguards to protect the rights of detainees.

Article 4 of the ICCPR states that Article 7 on prohibition of torture, cruel inhuman and degrading treatment and punishment is a non-derogable right and derogation cannot be justified under any circumstances. Article 2 of the Convention Against Torture, to which Sri Lanka is a state party, highlights that 'no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture'. The prohibition of torture is also outlined in Article 11 of the Constitution of Sri Lanka, while the Convention Against Torture Act No 22 of 1994 criminalizes torture with a minimum penalty of seven years imprisonment and a fine not less than LKR 10,000.

Graph 26.5 – Male and female PTA inmate respondents on whether they have been tortured during their period of detention



Of the study sample, 84% of male PTA inmates and 100% of female PTA inmates stated they suffered torture following arrest.

Torture was reportedly used as part of the interrogation process and detainees would be inquired about their involvement with the LTTE, whether they were in possession of any weapons, the role they played during a specific incident, and names of other persons involved. Detainees would also be taken to see the other detainees in custody or shown pictures of people or a list of names and asked if they were able to identify any of them. The detainees reported that this was primarily undertaken by TID and CID officers, while one interviewee stated he was also questioned by officers of the Army and Navy while he was held in Boossa Detention Centre. It was reported that torture and interrogation would be carried out by different officers on different days. The primary languages used during these sessions were Sinhala and Tamil; i.e. when the officer would ask questions in Sinhala, another officer, often a Tamil-speaking Muslim officer, would act as interpreter:

“Each division would come on different days and call us. They would have interrogated me close to ten to twelve times there. I would probably have not been beaten about three to four times during that period. All the other times, I was tortured. The problem was there was no one we could talk to or complain to. We didn’t know what was happening outside. We couldn’t even tell our families these things when they came to visit us there.”

PTA Remandee, ARP

It must be emphasized that the infliction of torture reportedly took place when a person was held at unauthorized places of detention and in administrative detention on a DO. Since during such time a detainee does not have to be produced in court for up to eighteen months,

there is no judicial review or oversight of the detention. The lack of judicial oversight would also impede access to medical attention for injuries and being subjected to a JMO examination, and hence prevents the infliction of torture from being recorded. The ultimate consequence of this is that the detainee would not be able to prove duress and coercion during the investigation period to challenge the validity of the statements and information obtained under torture during trial. The lack of judicial oversight of detention fosters impunity, as officers are not held accountable for unlawful methods of extracting information during investigation, despite torture being an offence in domestic legislation, with a minimum penalty of seven years imprisonment⁹⁴⁶.

Places at which detainees were subject to torture⁹⁴⁷:

During interviews the places where detainees mentioned they were subjected to torture included CID and TID offices in Colombo (i.e. CID 4th floor, TID 6th floor, TID 2nd floor), TID Boossa, Joseph Camp (Vavuniya), and Kandy Police Station.

Table 26.2 – Places of detention where male and female PTA inmates were subjected to torture⁹⁴⁸

Places of torture by the arresting authority	Male PTA	Female PTA
TID	23%	50%
CID	18%	
Boossa TID	9%	
CCD	9%	
Kandy police	8%	
Gampaha police	5%	
TFD Kandy	5%	
Joseph Camp, Vavuniya	4%	
CDB	3%	
Colombo police	3%	
Kandana police	3%	
Port police unit	3%	
Batticaloa police	1%	
Bulathkohupitiya police	1%	
Dehiwala police	1%	

⁹⁴⁶ Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment Act No. 22 of 1994

⁹⁴⁷ As uncovered in qualitative data

⁹⁴⁸ This data only indicate the arresting authority who subjected the respondents to torture. This data does not indicate whether they were subjected to torture at other places of detention.

Karandeniya police	1%	
Manipai police	1%	
Mannar police	1%	
NIB	1%	
Pettah police	1%	50%
TID Chettikulum	1%	
Trincomalee	1%	
Vavuniya	1%	
TID/CID	1%	

The methods used to subject inmates to ill-treatment and torture⁹⁴⁹

The methods of torture reported to the Commission include the following:

- Applying chili powder on genitals, face, body
- Asked to cover the ears and slamming on them
- Asked to lean over walls or tables and beaten
- Beaten on the buttocks
- Beaten, kicked, punched with clubs, sticks, poles, pieces of furniture, fiber batons, plastic (S -Lon) pipes, pipes filled with sand or other material
- Beating on the soles of feet, heels
- Beating on the stomach
- Burnt with wires and cigarette butts
- Covering the face with a bag filled with petrol and made to breathe
- Forced to masturbate in front of interrogating officers
- Handcuffed/tied legs/hands and made to stay on stressed positions for prolonged times
- Hanging and beating
- Hanging upside down and/or hanging upside down on stressed positions
- Keeping books on the head and beating on the head
- Kicked, punched, beaten on the groin area, genitals
- Made to stay naked for prolonged times
- Made to breathe in smoke
- Poking metal rods through the penis
- Pouring hot water on genitals
- Pricked with pins and needles between finger tips and nails
- Sensory deprivation methods such as using bright and different color lights
- Sodomized using iron rods
- Stamping on the body, genitals, hands, fingers, legs, face
- Stuffing clothes in the mouth, covering the face with a bag and suffocating

⁹⁴⁹ As uncovered in qualitative data.

- Subjecting to degrading treatment based on one's religious views/faith. Ex: forced feeding meat and alcohol to a Brahmin inmate, cutting the sacred thread
- Threatening one's family members
- Tied and hanged from trees, ceiling fans, ceiling fan hooks, window grills
- Torturing one's family members in front of them, showing one's family members after being tortured
- Water boarding and dunking in water

As PTA prisoners described the experience:

"They'll give in a small parcel and have to drink water, which comes from the toilet. We have to bathe inside the cell itself. They'll take us out only after five to six days and keep in the sun only for two to three minutes but they'll write that they kept us out for two or three hours. Then after ten for fifteen days they'll take us to Kandy CID and torture us by hanging us and hitting us. After that if we request medical assistance, they won't provide us with it. [We were] kept that way for six months. During that period, no DO, no Judge, not allowed to meet the lawyer, ICRC was allowed only once and family members were allowed twice then denied permission."

PTA Convicted, NMRP

"They hung me up and assaulted me. They put a cloth into my mouth and tied a bag around my head. They beat me and slapped me. Then I started to bleed. I have difficulties breathing [due to lung cancer] so when they hanged me, I could not breathe properly. They started beating my heels. It was in the TID office, where the old passport office was... They showed me a person and asked me if I knew him. When I said I didn't know him, they beat me again asking me to tell the truth. I kept repeating that I didn't know the person. I honestly didn't know the person. So they locked me in a cell for one to one and half months."

PTA Remandee, NMRP

"We would be called for inquiry to Colombo and then sent back to Boossa. I was tortured severely during the inquiry. There were concrete blocks and glass shards on top of it, upon which I would be forced to kneel down. Then they would make me apply *Siddhalepa* on my genitals and make me masturbate. Then in the inquiry room there would be various light bulbs of colours such as red, green and yellow [for sensory deprivation]."

PTA Remandee, JRP

"They sodomized me with a rod. I still have an injury from this incident. There is still some pus formation around the injury. They kicked me and punched me. They then started to beat me with sticks and then I fainted. When I woke up there was blood coming from my anus. I did not know what happened."

PTA Convicted, NMRP

"They tortured us every day without clothes for two weeks. They told us that until we accept committing the crime the torture will continue. They put petrol in a polythene bag and covered our faces. They threw chili powder on us. They kept books on our body and hit us because then the wounds or injury will not appear on our skin. Also, they use pipes because there won't be any visible external injuries."

PTA Life Prisoner, NMRP

"They didn't remove the blindfold for twenty -four hours. For one night and one day. We stayed that way overnight and they only removed it the next day. We begged them to remove the blindfold; we couldn't see anything. From then on, we were handcuffed the entire time and it was removed only when we were eating."

PTA Convicted, NMRP

"They made us sit and they handcuffed us and beat us on our thighs, backs and faces. They put handcuffs on both our legs and hands and put us in the cell; that was more difficult than the beating. They stripped us naked to humiliate us. They played around with our emotions because they had so much power over us. They think the only way to get information from an inmate is by beating them. When the officers are given so much power, they tried to humiliate us by making us do things which are not part of the investigations. It was more like campus ragging. We were better off; some people who were detained in abandoned houses got beaten up by drunk officers."

PTA Convicted, NMRP

The Commission was informed by at least three interviewees, that when detainees were arrested with their family members, the family member of the detainee would be tortured in their presence, in an attempt to compel the detainee to confess to their involvement in an offence. A male PTA remandee stated, "They tortured my uncle to get me to confess. My uncle, who had a heart problem, was tortured." Another male PTA remandee from NMRP stated that his brother and mother who were arrested after he was arrested were continuously tortured in order to force him to confess and to force his family members to implicate him in terrorist activities. He described it as follows:

"They bought my brother and my mother to the 4th floor and locked all of us in individual cells. They assaulted us for two months continuously and mostly they beat our soles with a stick. Even my brother and my mother were assaulted. They asked my mother to accept that I was a LTTE cadre and she had said that she did not know as I had come to Colombo when I was young. They asked my mother to sign a document stating that I was a LTTE cadre and, since my mother was old and she was unable to bear the pain, she signed but my brother refused and then they started to assault him. They released my mother after three months and my brother after nine months. He was kept in

the CID office for six months and in Negombo Prison for three months. He was released on bail and later he was acquitted."

Prisoners reported they were suffering from long-term injuries due to the torture to which they were subjected during arrest and a few requested the Commission's intervention to obtain treatment for these, which in some cases remained uncured or had become chronic.

Confessions obtained under torture: the patterns

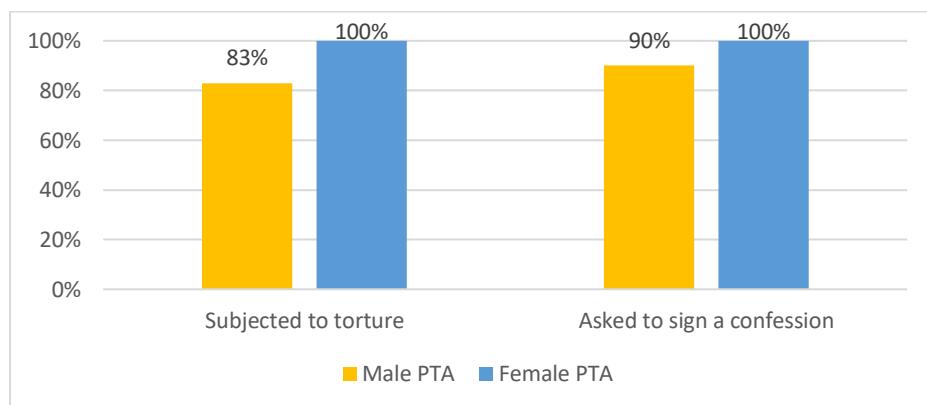
Article 15 of the Convention Against Torture states 'any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made'.

Section 16 of the PTA states that any statement made by an accused whether (a) it amounts to a confession or not; (b) made orally or reduced to writing; (c) such person was or was not in custody or presence of a police officer; (d) made in the course of an investigation or not; (e) it was or was not wholly or partly in answer to any question, may be proved as against such person, provided, however, that it was not made to a police officer below the rank of an Assistant Superintendent.

This provision is also contrary to the provisions of the Evidence Ordinance, which state that confessions made to a police officer⁹⁵⁰ and confessions made by the accused while in custody of a police officer⁹⁵¹ shall not be used as evidence against the accused.

The majority of PTA prisoners stated they were forced to sign a confession during the time spent in administrative detention, and the Commission found the pattern that torture would often precede the coercion to sign. A number of patterns were observed in the way confessions were obtained.

Graph 26.6 illustrates male and female PTA inmates who were subjected to torture and forced to sign a confession



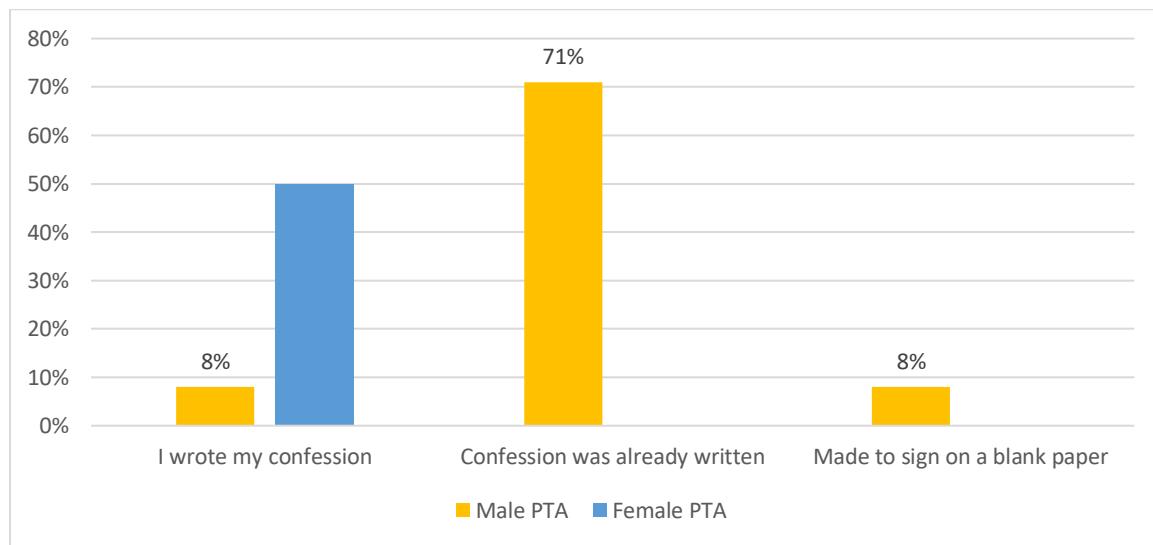
⁹⁵⁰ Evidence Ordinance No. 14 of 1895, s 25.

⁹⁵¹ ibid s 26.

The quantitative data points out that the overwhelming majority of those who were subjected to torture (83% men, 100% women) after their arrest were made to sign confession/s (90% men, 100% women).

Confessions were almost always obtained at an authorized place of detention, and not when the person was taken to an unauthorized place, most often while in TID or CID custody, possibly because of the requirement in the PTA that a statement to be made to a police officer not below the rank of ASP.⁹⁵² One inmate stated that he was transferred from Boossa to CID Colombo at least three times within a year, and each of those times he was presented before a person he believed was the ASP and told to confess. The interviews illustrate that the coercion to sign the statement was carried out by officers of different ranks, including Sub-Inspectors and OICs.

Graph 26.7 – Male and female PTA inmate respondents on how their confession statement was made



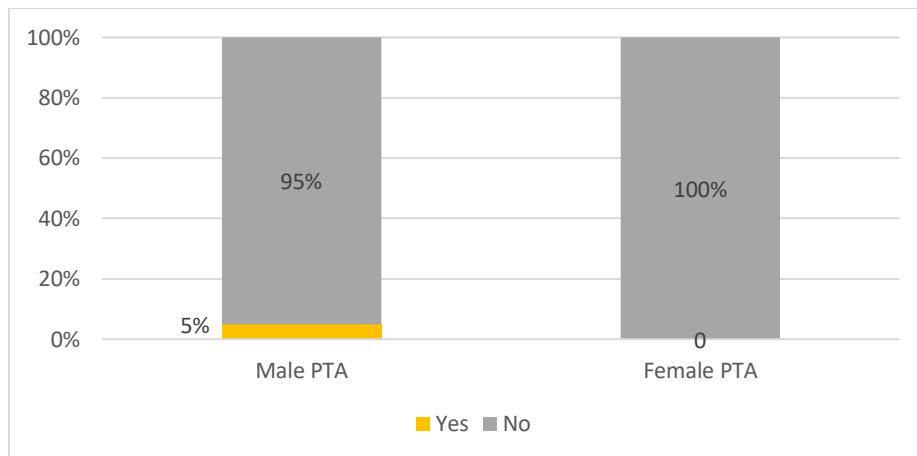
The quantitative data illustrates that for the overwhelming majority of male PTA respondents (71%), the confessional statement had already been written and they were only made to sign it. It must be noted that this question does not capture the fact that people held in detention were made to sign multiple confessions/blank papers, as respondents were expected to choose only one answer.

The qualitative data corroborates the quantitative data as interviewees said that the statement in most cases would be already typed when the detainee was required to sign. The Commission was also informed by a few detainees, that although a typist and a translator were present in the room, the confession was prepared by the officer and the typist without consulting the detainee. In the case of Sinhala PTA detainees, they would be required to write what was dictated to them. Only one detainee was reportedly allowed to write the first

⁹⁵² Prevention of Terrorism Act, No 48 of 1979, s 16.

confession in Tamil, and thereafter the person was required to sign many statements written in Sinhala, the contents of which were not explained to the detainee.

Graph 26.8 – Male and female PTA inmate respondents on whether the confession which was written in another language (Sinhala) was explained to them



Respondents were asked if the document they were asked to sign was in a language they understood and whether the content of the document was explained to them. 95% of male respondents and 100% of female respondents stated that the content of the document which they were made to sign, which was written in a language (Sinhala) in which they were not proficient, was not explained to them.

The Commission was informed that although during interrogation a Muslim officer, who would be proficient in Sinhala and Tamil, would typically be present to act as an interpreter, the repeated requests of PTA detainees that the contents of the Sinhala document be explained to them were not heeded despite the fact that an interpreter was present. Detainees stated that the typist or interpreter would later testify in court that they were present when the confession was recorded and that the detainee provided the statement with full consent.

When detainees refused to sign the document since they could not understand its contents, the refusal would reportedly be met with further torture. Most inmates stated they signed at least ten documents in this manner, while the highest reported number was fifty. The Commission was able to gauge that the total length of time detainees were tortured was directly impacted by how soon the detainee agreed to sign the statement. As a convicted PTA prisoner at ARP stated,

"I signed around forty to fifty documents written in Sinhala. They would ask me to sign Sinhala documents, but every time I refused to sign, I was beaten with the baton. They would stop beating me only if I signed. That's what I said in court. I don't know Sinhala and they made me sign, so I did. Then the judge asked is this your signature? I said yes, not just on this document, I have signed

many other documents without full consent but the court accepted the statements that I was forced to sign and the judge gave his verdict."

The Commission was also notified that detainees would be promised release and freedom to return to their families if they signed the statement, a condition which they were not able to refuse. Others stated they received threats of further violence and were forced to sign the statement. Multiple prisoners also informed the Commission that medical treatment for the injuries they had sustained during the torture was withheld until they signed the statement.

"They threatened to shoot me and said they will say they shoot me because I tried to escape. They said they will blindfold me and shoot me. They even said they will kill me and say that I committed suicide because I was unable to face the investigations. They forcefully took my statement they threatened me by saying that if I didn't sign, they would strip my family members naked."

PTA Remandee, NMRP

(The inmate is now partially deaf due to the torture he underwent)

The Commission was only informed of two to three instances where persons were allowed to write a confession themselves, and all such detainees had acknowledged their involvement at the onset of the detention period. The same detainees also asserted they were not subject to the same degree of ill-treatment as others. As one of them, a PTA inmate from NMRP stated, "They just slapped me. They didn't seriously attack me. I accepted that I had done this. I told them to indict me and because of that I wasn't tortured. That's a technique to escape torture."

The above-mentioned cases, where torture was not inflicted when a confession is self-volunteered by the detainee at the start of the investigation, further confirms that where torture is inflicted, it is carried out to compel a detainee to admit guilt.

The Commission observed that according to the narratives put forth by PTA detainees, once they duly signed all the documents placed before them, the administrative detention would come to an end within a short period of time and the inmate would be produced before a Magistrate. The statements obtained under duress during investigation often formed the basis of evidence for the trial, with the PTA placing the burden of proving the confession was given due to duress is upon the detainee. The cases of the interviewees illustrated that such confessions often form the basis of the case against them and trials typically continue for lengthy periods of time, resulting in PTA prisoners spending many years in prison.

5. Arrest and detention of female suspects

5.1. Woman Police Constable not present when female suspects were arrested and transported

The study also found women's experiences of the arrest and detention process differed to that of men. An oft-stated feature of the arrest process by female inmates is that there was

no Woman Police Constable (WPC) present at the time of their arrest and when they were being transported to the police station. For instance, a female inmate at NRP who is from Lunuwila was arrested at her house for the possession of drugs. The inmate states, "I was taken to the police station without a female police officer in a three-wheeler, in between two policemen. I was put in a very uncomfortable position." Legally, the CCP does not stipulate that a WPC has to be present when a woman is being arrested, nor does it state that a woman must be accompanied by a WPC when being transported to the police station. Although the CCP does not have any provision relating to a WPC being present during arrest and transportation of suspects, good practice and international human rights standards require the presence of a WPC to prevent any possible abuse of the arrested woman.

5.2. Woman Police Constable not present when female suspects were held overnight in police custody

Another common allegation made by female inmates was that WPCs were not present when they were kept overnight in police custody. For example, a female remandee at BRP was pregnant when she was arrested for a theft, along with her one-and-a half year old son and her sister. According to her, there were no WPCs present when she was arrested, or at the police station at which she was kept in a cell overnight with her sister and her child, but there was a 'grandmother' who stayed with them. The 'grandmother' this inmate talks about was an elderly lady who was employed by the police to oversee detained female suspects. If a WPC is not on duty when a woman is being detained overnight, the common practice appears to be to employ a 'matron' to stay with female suspects.⁹⁵³ This matron is often an elderly lady who is known to the police, and the police are required to maintain a logbook which notes under whose supervision arrested women are kept - a WPC or a matron.

There is no provision in the CCP which sets out the procedure to be followed when women or pregnant women are detained overnight in police custody. Moreover, this inmate alleged that they were provided rice in the night, but that her one-and-a-half-year-old son was not provided any special food so she had to breastfeed him until the next morning. Therefore, there is clearly a gap in the law as set out by the CCP, which does not take into account the needs and rights of women during arrest and detention.

5.3. Invasive body searches of female suspects by police

The Commission also interviewed several female inmates who claimed that they had been subjected to invasive body cavity searches by the police. According to Section 30 of the CCP, whenever a woman is searched, it should be by another woman 'with strict regard to decency.'⁹⁵⁴ A female inmate from WCP alleged that the police had received a tip about drugs

⁹⁵³ Notes from a Human Rights Commission researcher's visit to a police station and discussion with an Officer-in-Charge, which the Commission has on file.

⁹⁵⁴ Code of Criminal Procedure Act, No. 15 of 1979, s 30

being stored at her house, and when they had come to search her house, a female officer had searched her vagina in her kitchen. The inmate claimed that:

"They inserted the hand inside to check. They kept the coconut scraping machine and asked me to kneel and asked me to hold my hands from my back and to raise my legs. Then she inserted her hand in. (voice breaking...) There was nothing [to be found]. Then it was injured, and I couldn't use the washroom for about three weeks. I couldn't pass urine after I came here for some time."

A similar narrative was heard from a female inmate at GRP who was arrested on suspicion of heroin possession. The inmate claimed that when they arrived at the police station, she was taken to a room, and asked to remove all her clothes. According to her account:

"She [a female officer] asked me to spread my legs and she put her hand into my anal cavity and vagina. After that, she checked me by entering her hand to my vagina and anal cavity and said that there is something inside and she wants to check more. Then, she asked me to lie on the table and asked me to spread my legs. It is like what we do when we deliver a baby. She tortured me lot by entering her whole hand into my vagina. They could not find anything. Then I blamed them and said, "you are also women, why are you treating me like this?" They said that they are doing their duty."

It is internationally recognized that body cavity searches may not be conducted, except by trained professionals and medical practitioners⁹⁵⁵, in order to avoid causing injuries and discomfort to the suspect. Searching the body cavities of female suspects in such a manner is a clear violation of Section 30 of the CCP. Such conduct may also amount to torture, cruel, inhuman and degrading treatment and punishment under the Convention Against Torture Act⁹⁵⁶, which carries a maximum punishment of ten years imprisonment, and is conduct prohibited by Article 11 of the Constitution of Sri Lanka.

5.4. Allegations of sexual harassment of women by police

Several female inmates alleged they were subjected to sexual harassment by police officers. One such allegation was from a female inmate at KRP who claimed that she was arrested on a drug related charge by the police, and the police officers who accompanied her attempted to remove her sari while transporting her to the police station in a trishaw. She alleged that:

"Without taking me to a police station, they took off my sari on the way to a police station. Honestly, I got really angry. It was inside the trishaw. There was the trishaw driver. There was that woman [female police officer]. Honestly, I

⁹⁵⁵ SMR 2015, r 52(2)

⁹⁵⁶ Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act (No. 22 of 1994), s 2.

got really angry. It was really wrong of them to take off my sari... they had their legs on either side of my knees, and took off this [sari]."

The inmate then claimed that the trishaw was stopped by police at a junction on the way to the police station and a female police officer had again tried to remove her sari, in front of a large crowd that had gathered.

The Commission received a similar complaint from a female inmate at GRP who was accosted by the police on the sidewalk when she was alighting from a trishaw. She alleged that a police officer grabbed her by her brassiere, which tore, and she was then handcuffed and taken to the police station. A female inmate at KRP provided a similar narrative of how she was sexually harassed by a male police officer while being taken to a police station in a trishaw. She alleged that there were no female officers in the trishaw, and a male officer got into the trishaw with her and handcuffed her. She then claimed that,

"Then with his own hands [he] searched my chest area. My four year old son was also inside the three-wheeler... when this person [the police officer] ... tried to remove my top to search the torso, I objected to it. Then he invited me to have sex with him. I objected to that also and said no."

The incidents discussed above indicate the vulnerabilities faced by women during arrest, transportation and detention by the police, particularly to sexual harassment.

6. General observations

Based on the interviews conducted with, and complaints lodged by inmates, there are substantial allegations of police misconduct which are wide-ranging and serious in nature. The allegations regarding the failure of the police to follow due process during the arrest and detention points to two critical issues. One is the blatant disregard for due process as set out in the CCP and the standards mandated by the Constitution. The other is the weaknesses in existing laws which set out the procedure to be followed during the arrest and detention of suspects.

The arrest process of narrated by PTA detainees illustrated that it did not adhere to due process safeguards, with many reporting being abducted from their homes, workplaces or while travelling, families not being provided an arrest receipt or provided information on the place of detention, being held in unauthorized places of detention and being subjected to torture and forced to sign confessions in a language they did not understand. Their contact with family and lawyers was prohibited during the days, weeks and in some cases even months following the arrest, with some families not being informed of the arrest even months after the arrest.

A large number of allegations were received from PTA detainees, who reported they were subject to torture, inhuman, degrading treatment and punishment under administrative detention. They also reported being forced to make confessions under conditions of physical

coercion and duress. The patterns in arrest and detention of PTA detainees indicate that the lack of adherence to procedural safeguards by arresting authorities enables confessions to be obtained by torture. Confessions that were made under such circumstances, now form the basis of evidence for many cases against the PTA prisoners, which has resulted in their prolonged period of remand.

The Commission's findings and analysis also revealed that there are gaps in the law with regard to the treatment of women during arrest, transportation and detention which leave room for misconduct to occur. Additionally, the Commission found that pregnant women and nursing mothers are allegedly not provided with the necessary facilities when detained in police custody.

27. Access to Legal Representation

'It must be understood that a lawyer is the point of contact that the general public primarily has with the judicial system. As such, much of their actions and character would rub off on the entire judicial system as a whole. Through a lawyer's ability to act as a true gentleman or lady with a high standard of conduct, he or she will be able to strengthen the common man's belief in the judicial system. Your task as lawyers is to assist the court to arrive at the truth and dispense justice.'

His Lordship H. N. J. Perera, Former Chief Justice of Sri Lanka,

1. Introduction

The fundamental right to a fair trial is guaranteed in Article 13(3) of the Constitution of Sri Lanka and the UDHR. A cornerstone of the right to a fair trial is the right to legal representation and, where a person may not have sufficient means to pay for it, legal aid for the proper administration of justice, enshrined in Article 14 of the UN ICCPR and Section 4(1) of the ICCPR Act (No. 56 of 2007).

A defendant has a right to be represented by a lawyer as per Section 260 of the Code of Criminal Procedure. Section 195(g) of the same states that the judge shall assign an Attorney-at-Law upon the defendant's request in the High Court and Section 353 states a judge may assign a lawyer to the appellant in the Court of Appeal 'if, in the opinion of the court, it appears desirable in the interests of justice that the appellant should have legal aid'.

During the course of this study, the Commission observed the lack of a legal representation directly impacted a detainee's enjoyment of the due process rights afforded to them and the length of time a pretrial detainee spends in prison. The patterns that emerged in the narratives put forth by detainees are discussed below.

2. Legal representation and the Magistrate's Court

The Magistrate's Court is the busiest court in the Sri Lankan judicial system, as affirmed by the AG⁹⁵⁷. It is also the court where the decision to restrict an individual's liberty is made at first instance which leads to pre-trial detention by an order of the judge. The judicial processes of the Magistrate's Court therefore have a direct impact on the level of overcrowding in prisons and thus, the conditions of prisons as well as the rights of prisoners. An accused may retain a lawyer privately or represent themselves in Magistrate's court where no assigned counsels are appointed upon request.

⁹⁵⁷ Interview with Jayantha Jayasuriya, Attorney General, Attorney General's Department (Colombo, Sri Lanka),

In the questionnaires administered to pre-trial detainees during this study, 50% of male remandees stated they did not have a lawyer when they were produced before a Magistrate for the first time, while 31% female remandees said the same. A remandee who cannot afford legal representation may not be able to make interventions at the Magistrate's court regarding his or her bail, especially a first-time offender, as illustrated by many remandees who said they had no idea what was going on in court.⁹⁵⁸

Foreign national remandees are particularly vulnerable in the prison system since, without the support of family members or local contacts, as well as the lack of access to their finances, they have no means of retaining a lawyer to represent them. A foreign national remandee from NRP stated, "I don't have a lawyer. They only give us fourteen days, fourteen days, fourteen days. We go, judge does not say anything. She looks at us, she sees us, give us the next fourteen days. Finished. They don't let me know what's happening." Another remandee bemoaned "No lawyer is ready to take my case until it goes to High Court. I've heard that there are 1900 cases pending and I'm just one of them and I'm very new because it's a 2017 case, so they say that you have to wait no matter what – two years or three years, nobody knows."

Legal representation at the Magistrate's court is also necessary for remandees who cannot fulfil bail conditions as they have to remain in prison unless a lawyer is able to intercede on their behalf and file a motion for bail conditions to be changed. In the case of monetary bail, if a remandee cannot afford the bail amount, they may also not be able to afford to hire a lawyer, in which case the remandee may be left without an alternative and will have to spend a prolonged period of time in prison.⁹⁵⁹

The Commission received twenty-one requests for assistance in posting bail while another sixty-four written requests stated they are unable to fulfil bail conditions and are unable to request the courts to amend the bail conditions as they did not have lawyers.

3. Quality of legal service

Rule 10 of the Supreme Court (Conduct and Etiquette for Attorneys-at-Law) Rules 1988 requires Attorneys-at-Law to not 'accept any professional matter unless he can attend to it with due diligence'. Rule 18(a) of the same states an Attorney-at-Law 'should never act in a manner detrimental and/or prejudicial to his client'.

A number of interviewees stated that although they had paid lawyers to represent them at the first Magistrate's Court hearing, their lawyers did not speak in court on their behalf. Many interviews also stated they were not aware of what ensued in court at the first hearing, the reason bail was rejected or the current status of their case, as their lawyers did not provide an explanation to them. Often families of arrested persons retain lawyers who are in court on the day to appear for the suspect when he or she is first produced in court, and the same

⁹⁵⁸ For a detailed discussion on ability of defendant's understanding of court proceedings, please refer chapter Legal and Judicial Proceedings.

⁹⁵⁹ For a detailed discussion on bail conditions, please refer chapter Legal and Judicial Proceedings.

lawyer is not thereafter retained by the family/prisoner. Hence, another lawyer is retained for the appearance for the next hearing with most often persons having no legal representation when they are produced every fortnight for remand to be reviewed, or have different lawyers appear at each instance.

Rule 27⁹⁶⁰ states an Attorney-at-Law may ‘in the best traditions of the profession, reduce or waive fees on account of poverty or hardship to the client, where otherwise the client would be effectively deprived of legal representation’. To the contrary, in practice, prisoners often stated their lawyers appear in Court only as long as they receive their fees; in the case of a payment default, which is to be expected because a remandee does not have access to financial resources and relies on the support of family and other contacts, they would refuse to appear for the defendant in court. Payment of fees would inevitably be inconsistent in the case of many male remandees, who are the primary breadwinners in their families and suffer from loss of income during their time in remand. The remandee will experience a catch-22 situation, where his lawyer does not appear for him in court since he cannot pay the lawyer’s fees, which prevents him from being released on bail and resume earning an income. As a condemned prisoner from PCP expressed the difficulties, he faced in paying for his lawyer:

“I had a little piece of land given to me by my parents, I had even sold that to pay for the lawyers. I hope the lawyers are happy now.”

Apart from knowing the next court date, there is a glaring gap in the remandees’ knowledge about the status of their case – for example, 28% of male remandees and 23% of female remandees stated they were not aware of any aspects of their case except the next date. According to the prisoners their lawyers do not visit them in prison and hence spend only a few minutes discussing the case with them prior to the hearing. For instance, of the remandee respondents who have lawyers, 83% of male respondents and 82% of female respondents stated that their lawyer has never visited them in prison for consultations. Following the conclusion of the hearing prisoners stated they are not informed of what transpired during the hearing either. As a condemned prisoner from PCP stated:

“I was condemned in March 2015. I have appealed. I have gone eight or nine times for my appeal. They postpone for seven or eight months from that date. Cases are lagging for a long time. A government lawyer is representing me. We do not have money to spend because our livelihood is farming. They (the lawyers) come near the cell (in Court) and tell us ‘I am here’ and then they go. We do not get the opportunity to talk to them.”

A condemned inmate from MCP described his lack of knowledge about the impact of not pleading guilty thus:

“I think the judge wanted to give me a lighter sentence at that point, but my lawyer said to plead not guilty. He said, ‘don’t be afraid, we can appeal and still get you acquitted’. I didn’t know I would have to stay in prison during the

⁹⁶⁰ Supreme Court (Conduct and Etiquette for Attorneys-at-Law) Rules 1988, r 10

appeal. I thought I would appeal and then I'll be able to go home from the Court itself. We have never stayed in prisons like this and we don't know anything about the law. Since I didn't have any legal knowledge, I didn't plead guilty, as per the instructions of the lawyer. We appealed to the Court of Appeal and the same sentence was given. Death penalty."

Defendants, particularly from disadvantaged backgrounds, who are not aware of the status of their cases and find it difficult to follow court proceedings, would find themselves in a position where they may not be able to hold their lawyer accountable and become vulnerable to malpractice and exploitation by their legal representative. Numerous complaints were received from condemned prisoners about lawyers not being present for court trials, despite the inmate having paid for their services by raising finances with much difficulty; some even stated their lawyers were not present on the day the death sentence was pronounced:⁹⁶¹

"The lawyer at High Court lawyer deceived me, took the money and did not even appear for me on the day the court issued the verdict. Had he properly argued and appeared for me; I would not have been given this prison sentence. My current lawyer informed me that this case could be argued at the Court of Appeal and an acquittal can be obtained. I have paid him two lakhs. If he doesn't do right by me, I feel like taking my own life."

Convicted (Appeal), PCP

In fact, a number of complaints were received by the Commission, particularly from foreign nationals and inmates of a lower socio-economic background, about lawyers allegedly taking money from inmates and then not taking the requisite action or sometimes even disappearing altogether. As a condemned prisoner from PCP stated:

"My family paid a lawyer named A for me. So far, we have paid Rs. 562,000 but she did not take up my case. She said she will come but never turned up. Later she assigned another lawyer called B. When we contacted B, we were told that unless A contacted him, he will not take up my case. So that was left as it is, and we lost the money. I don't have money to pay this new lawyer, my relations are contributing money and supporting me. Initially my mother paid the other lawyer by selling some land. My mother is no more."

Although such allegations remain unverified, the existence of such a pattern alludes to gross professional negligence on the part of the lawyer, which causes a prisoner to become more vulnerable during the criminal justice process.

⁹⁶¹ For a detailed discussion on complaints from condemned prisoners, please refer chapter Prisoners on Death Row.

4. The lack of legal aid

Section 4(1)(c) of the ICCPR Act stipulates that a person accused of a criminal offence shall be entitled to have legal assistance assigned to him without payment where he may not have the means to do so.

According to the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems⁹⁶², 'legal aid is a foundation for the enjoyment of other rights, including the right to a fair trial, a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process'. It also states 'a functioning legal aid system, may reduce the length of time suspects are held in police stations and detention centres, in addition to reducing the prison population, wrongful convictions, prison overcrowding and congestion in the courts, and reducing reoffending and revictimization. It may also protect and safeguard the rights of victims and witnesses in the criminal justice process.'

During the course of this study, the Commission received sixty-four requests for legal assistance and lawyers. The majority of requests were received from remandees wishing to file motions for bail or to change their bail conditions at the Magistrate's Court. From inside prison, inmates have little to no means of finding or contacting lawyers to represent them or to access legal information due to the lack of communication facilities, and an effective or accessible legal aid mechanism. This situation is made worse for individuals without family ties or whose families live far away and cannot visit them or make arrangements to acquire legal assistance.

The cost of retaining lawyers

Inmates are placed under tremendous financial strain in order to acquire legal representation in courts, and many interviewees stated they have to compromise the livelihood of their families and standard of living in order to afford legal services. A prisoner from KRP stated, "We sold our house to fight this case. The lawyer's total fee is ten lakhs and seven lakhs have already been given. I would just plead guilty if I had actually committed this crime", while another echoed it by saying, "We have come to the point of selling all our lands. Suppose one has about five cases. When we have to spend two or three lakhs per case, it would cost a fortune. And there are other costs like when a family visit." Male inmates in particular, whose imprisonment has already caused financial difficulties for their families, alluded that the cost of hiring lawyers and lawyers' lack of concern for the inmates' cases have had an adverse impact on their mental well-being. A common cause of grief and concern was the impact of paying high legal fees on their family members' quality of life.

The DOP Statistics of 2017 state that of the 217 prisoners sentenced to death in 2017, 104 prisoners had a monthly income of 250 – 300 Sri Lankan Rupees and fourteen had no

⁹⁶² UN General Assembly, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, 20 December 2012, Resolution 67/187, p 5

monthly income, while ninety-nine of the condemned prisoners had a monthly income that was more than 300 Rupees.⁹⁶³ These statistics illustrate that the majority of death row prisoners are from severely economically marginalized communities and would face challenges retaining legal counsel. This was confirmed by condemned inmates who reported that lawyers' charges for cases where a death penalty can be awarded are high, and since such trials ordinarily continue for a number of years inmates experience immense financial difficulty procuring private lawyers. The common sentiment expressed by condemned prisoners was that a defendant's financial situation could be a determinant of whether a death sentence is pronounced because it impacts whether or not they will be able to retain competent legal counsel.

Complaints against state appointed lawyers

Although inmates are provided state appointed lawyers at the High Court if they are unable to privately hire legal counsel, the general perception is that state-assigned lawyers are juniors with little or no experience, do not pay adequate attention to every case since they are handling many trials simultaneously, and do not receive sufficient remuneration for a case from the State. This discourages inmates from requesting the court to assign counsel. A condemned inmate at PCP said, "A government lawyer appeared for me. The government lawyer didn't do the case with any interest." Another suspect, who did not have a lawyer at the time he was interviewed, stated:

"They assigned a lawyer to me in the High Court - a government lawyer. Generally, we are happy if a lawyer has been assigned for us by the court when we can't afford one, but the government lawyers must communicate with us. They never do that. They always keep getting new and later dates. If we are sentenced to death, he will say thanks to the judge and walk out. We are the people going through all the hardship. Not them."

Remandee, NRP

Many prisoners alleged state appointed lawyers assigned to them did not cross-examine witnesses thoroughly or were not present on the day their sentence was pronounced. Condemned inmates informed the Commission in writing that they did not have lawyers for a part or whole of their trial because the appointed lawyer failed to be present or withdrew their services completely before the trial was concluded. Prisoners described their experiences as follows:

"The Court ordered us to give written submission to close the case. We handed over the written submission. Since that day the government lawyer has been saying different things and he avoided more than fifteen hearings. This case has been going on since then – I have been going to the Appeal Court since

⁹⁶³ Department of Prisons, *Prison Statistics of Sri Lanka* (Vol. 37, 2018), p 55

2011. I can't remember how many hearings I have had to attend. I had more than fifty court proceedings."

Convicted, KRP

"I was under severe financial strain and could not pay for a lawyer at the Court of Appeal. I was given a state appointed lawyer. I did not know who he was – and [he] did not know anything about the case. As a result, within fifteen minutes without even trying my case, the Court of Appeal affirmed the award of death penalty. If I had the opportunity to get a lawyer who would explain the issues surrounding the incident, I am certain that I would have gotten only a normal conviction."

Condemned, WCP

"The government lawyer never visited me in prison. They don't even speak in courts. They stand up when our case is called in court, say "ok" and then sit down. They never asked me what has really happened in the case? Therefore, I have cancelled the lawyer who was assigned for me. Whether that lawyer appears for me or not, it makes no difference."

Remandee, NRP

Appeal to the Supreme Court

The lack of finances is also a reason many condemned inmates stated they had not appealed to the Court of Appeal or Supreme Court. Although a judge may assign a counsel for the appellant to appeal to the Court of Appeal, assigned counsel to appeal to the Supreme Court is not guaranteed by law, and is subject to the discretion of the court.⁹⁶⁴ Hence, due to this, only appellants who can afford the legal fees can appeal to the Supreme Court, thereby contravening the principle of equal access to justice. As described by a condemned man at WCP:

"I didn't appeal to the Supreme Court. I cannot afford it because we only have the house that we live in. My mother will not have a place to live if that house is sold. But without selling the house, I will not have money to retain a lawyer either."

Legal representation for PTA prisoners

Another discernible trend is the obstacles faced by suspects detained under the PTA in acquiring legal representation, particularly for high-profile cases, as they stated that lawyers have refused to represent them due to the stigma attached to such matters, and are also influenced by the prevailing political situation at the particular time. A number of PTA detainees are hence dependent on lawyers provided by a few non-governmental legal aid

⁹⁶⁴ Code of Criminal Procedure Act No. 15 of 1979, s 353

organizations due to financial difficulties in obtaining a private lawyer. The Commission came also across a few inmates representing themselves in court.⁹⁶⁵

4.1. Drug offenders and legal assistance

The Commission observed that the majority of remand prisoners were suspected of committing drug related offences. Where non-bailable offences, such as those under the Dangerous Drugs Act are concerned, interviewees indicated that lawyers have created an impression that they do not hold any power in the Magistrate's Court until an investigation has been completed. This leads to individuals being held on remand for long periods of time, with their remand period extended every fourteen days without a foreseeable end date, until the police investigation is concluded, the report of the Government Analyst is submitted and, the file is sent to the AG's department for a decision to be made whether or not to file an indictment. Remandees stated they are discouraged from procuring the services of a lawyer during this period, as a result of which no intervention is made at the Magistrate Courts to limit the pre-trial detention period, which can continue for years without indictment for drug offenders.

This will be followed by a trial in the High Court, during which most drug offenders (unless bail has been granted due to exceptional circumstances) remain imprisoned. The Commission has come across individuals arrested for drug offences being held in remand for up to nine years, as in the case of a female remandee held at NRP, who was arrested in 2009. Her trial began in 2011 and is still ongoing.

Such a lengthy judicial process also creates a climate in which the interviewees claimed they are encouraged to plead guilty by other inmates, prison officers, judges and especially their own lawyers in order to expedite the proceedings and conclude the case. This results in individuals who are unaware of the legal process and without sufficient financial means to obtain legal representation, becoming more vulnerable and disadvantaged in the criminal justice system where they may plead guilty, because they cannot afford legal fees. This is a denial of the right to a fair trial and makes due process available only for citizens of a higher socio-economic class. As one inmate described it:

"I went to court I raised my hand and told them I'm very sorry about everything and I'm guilty because they said if you [plead] guilty then you don't have to do anything. This is what most of the inmates and the lawyers we have tell us. We have Welfare (Division of the prison) who comes once in a while to talk to us and advise us, and he tells us if you go to court you should say you're guilty."

Remandee, NRP

⁹⁶⁵ For information on legal services available to persons arrested under the PTA, please refer chapter Prisoners held under the Prevention of Terrorism Act.

Individuals held on remand for drug offences have also complained that when they have hired the services of a lawyer at the Magistrate's Court while on remand during the period before the indictment is filed, lawyers have continued to charge them, all the while stating they cannot do anything until the Government Analyst report is presented in court.

5. Lawyers and the length of the trial

When retained lawyers are absent from court proceedings, the case is postponed for another few months during which time the inmate continues to remain in prison. As a result, the number of times the lawyer and state counsel are in attendance is a significant determinant of the length of the trial.

The Commission received a number of complaints alleging lawyers were absent for a number of hearings in the trial, which caused the hearings to be postponed by the judge thereby increasing the case delays. Some interviewees stated they have experienced this a number of times, with the resultant length of their trial extending for years. Such a prolongment of court proceedings, owing to the nonappearance of legal professionals in court is a contravention of the right to be tried without undue delay under Article 14(3)(c) of the ICCPR.

An inmate stated, "It has been three years since we started the appeal, they keep giving me a date because either my lawyer doesn't come, or the judge doesn't come. Due to this I just keep going and returning", while another stated, "Even after seven years the appeal has not been examined and a decision made. The reason is the lawyers who appear for the prosecution intentionally disregard the case and the dates and prolongs the case." Another opined that:

"There should be judges, crown and our government lawyer. All of them should be there. All of them should be there to make this happen. Now, if State didn't come, the case is postponed. If one of the judges is absent, again the case is postponed. Even if our lawyer is absent, the case is postponed. Earlier they postponed it by eleven months or six months. Now, they postpone by two months."

It must also be pointed out that the transfer of an inmate to court is a burden on the severely understaffed DOP, as well as the public resources, as it requires a number of escorting officers (with a higher number of officers required in the case of special prisoners) and prison buses, which sometimes have to travel long distances when a prisoner is tried in a court out of town. When individuals are transferred to court only to find their lawyer or the state counsel is not in attendance, it results in the waste of public resources. Prisoners have stated that lawyers who ask for repeated adjournments and delay cases should be charged a late fee for their delays. This practice is followed in countries such as Singapore and Switzerland.

An accused's right to appeal, stipulated in Section 320 of the Code of Criminal Procedure, is a significant component of the fundamental right to a fair trial, particularly in the case of individuals who have received the death penalty. During the course of this study, many interviewees informed the Commission they did not appeal the verdict of the High Court as they could no longer afford to be overburdened with legal fees, especially considering the number of years taken to conclude the trial and likely to conclude an appeal trial. According to the quantitative data gathered, 27% of male condemned respondents and 15% of female condemned respondents have spent three to five years on appeal, while 27% of male respondents have been on appeal for five to ten years⁹⁶⁶, with the longest reported time a condemned prisoner has been on appeal is twenty-one years⁹⁶⁷. Hence, the absence of the lawyer, which results in delays, impacts adversely on the ability of the defendant to afford the appeal.

6. Legal Aid Commission

The Legal Aid Commission of Sri Lanka (hereinafter referred to as LAC is mandated to provide legal aid for persons who cannot afford legal representation, as per the Legal Aid Law (No. 27 1978). The LAC provides legal aid with regard to filing motions to vary bail conditions, appeals and revision appeals. The Head Office of LAC is assigned to accept cases from the CRP, WCP, NMRP, MCP and KRP. Regional offices in Hambantota, Tangalle, Jaffna, Batticaloa and Trincomalee assist the head office in organizing legal aid clinics for the prisoners upon the request by the SPs of the prisons in their respective areas.

It was stated during the stakeholder interview with the Chairman of the LAC that legal aid is provided to prisoners who are unable to afford a lawyer and whose monthly income is below Rs. 25,000. However, he also stated that, unlike the previous Commissions, drug cases are not taken up as a policy of the current LAC, which mostly focuses on providing legal aid for civil litigation. The Commission was also informed that, while criminal cases are taken up by the LAC, it is not equipped to provide legal aid for cases involving serious crimes, which may take decades to conclude. Legal representation for minor criminal offences which can be concluded within a short period of time and bail applications for criminal cases can be sought from the LAC. The Chairman affirmed that legal aid clinics are conducted periodically in prisons to help inmates file motions for bail. He also stated that one of the challenges faced by LAC is the limited number of legal officers and limited funding, which prevents legal aid clinics being conducted frequently and in regional areas. He believes that awareness of legal aid and the functions of the LAC need to be promoted within the local communities. According to the chairman of the LAC, a majority of the remandees who are awaiting the grant of bail are unable to pay monetary bail and the LAC is not able to provide financial assistance to such inmates.

Prisoners had positive as well as negative comments with regard to legal assistance provided by the LAC. Some inmates stated, even though the LAC officers noted their case details, the

⁹⁶⁶ For more statistics on condemned prisoners on appeal, please refer chapter Prisoners on Death Row.

⁹⁶⁷ The condemned prisoners who had been on appeal for twenty-one years is currently held in PCP.

necessary legal assistance was not provided to some of them, while at the same time the Commission came across inmates who were able to successfully appeal and have their sentences reduced with the help of the LAC.

7. General observations

The Commission observed it is persons from impoverished backgrounds who primarily required legal representation and aid as they did not have the financial means to hire private lawyers. Even persons who are able to gather funds through the sale of family assets are vulnerable to lawyer malpractice since they do not have the ability to access redress mechanisms to hold their counsel accountable. It is also likely they do not possess knowledge of legal and judicial proceedings and will not be able to comprehend trial hearings to hold their lawyers accountable.

State appointed lawyers, who are generally said to be inexperienced, are not viewed favourably as they are reportedly not able to provide adequate individual attention to each case, do not provide the defendant with information on the case proceedings, and miss multiple hearings. The poor standard of legal service offered by state appointed lawyers is thought to be a result of the nominal fees paid to them for each case.

Delays in the case proceedings are attributable to counsels not being present at the trial, which results in the case being postponed for another few months, during which period the detainee has to languish in prison. Hence, their due process right against undue delays in the case is directly violated due to the conduct of legal counsel.

When the quality of legal representation impacts the type of sentences given, it will result in persons of disadvantaged and marginalized socio-economic groups being subject to harsher sentences, spending prolonged periods in remand and having reduced chances of going out on bail. This constitutes unequal application of the law, with punishment being dependent on the socio-economic standing of the person rather than culpability.

28. Legal and Judicial Proceedings

'The prison therefore functions ideologically as an abstract site into which undesirables are deposited, relieving us of the responsibility of thinking about the real issues afflicting those communities from which prisoners are drawn in such disproportionate numbers. This is the ideological work that the prison performs—it relieves us of the responsibility of seriously engaging with the problems of our society.'

Angela Davis
'Are Prisons Obsolete?' (2003)

1. Introduction

This chapter seeks to discuss the issues uncovered by the Commission regarding the functioning of the judicial process, which appears to directly impinge on the right to a fair trial and equal access to justice, as well as contribute to prison overcrowding and the hardships associated with it. During the course of this study, in inquiring about the experiences of prisoners during their time in court, the Commission observed a number of patterns, corroborated by comments from the various stakeholders interviewed, indicating the need for reform in key areas of the criminal justice process.

The right to a fair trial is enshrined in Article 14 of the ICCPR which *inter alia* guarantees the right to a trial without undue delay, presumption of innocence, the right to be informed of the nature and cause of the charge in a language of the accused's proficiency, and access to an interpreter if the accused doesn't understand the language of the court.

Article 13(4) of the Constitution of Sri Lanka states: no person shall be punished with death or imprisonment except by order of a competent court, made in accordance with procedure established by law. The arrest, holding in custody, detention or other deprivation of personal liberty of a person, pending investigation or trial, shall not constitute punishment. Article 13 (5) affirms that every person shall be presumed innocent until he is proved guilty.

In the case of *Anuruddha Ratwatte and others v The AG*⁹⁶⁸, it was held that, 'Article 13 of the Constitution covers all three stages at which a person's liberty is deprived... and the respective sub-articles specifically provide that the deprivation of personal liberty cannot take place except according to 'procedure established by law.'

2. Issues related to bail

The Commission found that the functioning of the Magistrate Court and awarding bail is directly linked to the conditions and treatment of prisoners, since excessive denial of bail would directly contribute to overcrowding and adverse living conditions in prison. During

⁹⁶⁸ [2003] 2 Sri LR 39 (SC).

this study, the current practices surrounding the award of bail in the Magistrate Court and the burden denial of bail as a practice, rather than an exception creates on the correctional system was raised by prisoners, senior prison officers, DOP Commissioners and external stakeholders. The trends and patterns reported to the Commission are discussed in detail below.

2.1. The refusal of bail

Article 9(3) of the ICCPR states 'anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial.'

The United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) discuss the use of alternatives to imprisonment in order to reduce the use of incarceration. The Tokyo Rules⁹⁶⁹ strongly discourage the use of pre-trial detention except as a last resort in criminal proceedings, and state that 'this shall be administered humanely with due regard for the protection of the society and the victim'.

The national legislation states that bail must be granted as the rule not the exception⁹⁷⁰ and the Bail Act sets out the following guidelines to determine whether the accused may be released on bail. Where the provisions of the Act apply to the offence committed, the court may refuse to release such a person on bail, where there is reason to believe such person would:

- (i) not appear to stand his inquiry or trial;
- (ii) interfere with the witnesses or the evidence against him or otherwise obstruct the course of justice; or
- (iii) commit an offence while on bail; or
- (iv) that the particular gravity of, and public reaction to, the alleged offence may give rise to public disquiet.⁹⁷¹

The Bail Act further states that suspects committing non-bailable offences may be released on bail at the discretion of the court⁹⁷², and a suspect accused of committing an offence punishable by death or life imprisonment may not be released on bail except by a judge at the High Court.⁹⁷³ The Bail Act also allows for appellants to be released upon the issuance of security under exceptional circumstances⁹⁷⁴, which was confirmed by the learned judges in

⁹⁶⁹ UN General Assembly, *United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)* 14 December 1990, Resolution 45/110, r 6.2.

⁹⁷⁰ Bail Act No. 30 of 1997, s 2

⁹⁷¹ ibid s 14 (1)

⁹⁷² ibid s 5

⁹⁷³ ibid s 13

⁹⁷⁴ ibid s 19

the case of *Queen v Rupasinghe Perera*.⁹⁷⁵ Taking into account the provisions and case law relating to the law of bail, it can be stated ‘there is a right to bail but it is not an absolute’⁹⁷⁶.

In *Sicille Priya Cannini Kothalawala v AG*⁹⁷⁷, it was held that, under/by virtue of Section 7 (of the Bail Act⁹⁷⁸), the Court has jurisdiction to release on bail any person suspected or accused of, being concerned in committing or having committed, a non-bailable or bailable offence. The judgment citing the judgment in the case of *Pathirana and another v. OIC Nittambuwa Police*⁹⁷⁹ further stated that the accused is entitled to be released on bail at any stage of the proceedings and ‘an order of remand in such circumstances is an illegal order’. In this regard, Justice L.T.B. Dehideniya reaffirmed the granting of bail by linking it to the presumption of innocence and stated:

‘The Learned President's Counsel for the Petitioner submitted that the rule in relation to the bail under the Bail Act is to give bail and the exception is the refusal. In response to this Learned ASG submitted that if this rule is adopted even a rapist will go free. I believe that this is not the view of the Attorney General's Department, but is the personal view of the Learned ASG. The golden rule of our law is that a person is presumed to be innocent until he/she is proved to be guilty. Therefore, any person accused or suspect of a rape cannot and should not be called as a rapist. He is only an accused or a suspect of a rape with the constitutional safeguard (Article 13(5) of the Constitution) of innocence until he is proved to be a rapist.’⁹⁸⁰

The Chairperson of the BASL in 2018, during an interview with the Commission pointed out that when it comes to offences to which the Bail Act is applicable, the maximum time period a person can be held in remand is up to two years, which has been reaffirmed by numerous judgments. Hence, being held on remand for more than two years becomes unlawful under national law, where such offences are concerned.

According to the Prison Statistics of 2019⁹⁸¹, 2,107 remandees had been awaiting trial (in Magistrate Court) for six to twelve months, 765 remandees for twelve to eighteen months, 448 remandees for eighteen months to two years and 409 remandees awaiting trial for more than two years.

⁹⁷⁵ 62 NLR 238

⁹⁷⁶ Sumudu Premachandra, ‘Law of Bail: An in Depth Analysis’ *Law College Hostel-Voet Inn Magazine* (2013)

⁹⁷⁷ CA (PHC) APN 27/2016

⁹⁷⁸ Bail Act No. 30 of 1997, s 7(1), ‘Whenever any person suspected or accused of, being concerned in committing or having committed, a non- bailable or bailable offence appears, is brought before, or surrenders, to the court having jurisdiction, the court may release such person, (a) on an undertaking given by him to appear when required; (b) on his own recognizance; (c) on his executing a bond with one or more sureties; (d) on his depositing a reasonable sum of money as determined by court; or (e) on his furnishing reasonable certified bail of the description ordered by court: Provided that where the person has appeared before court on summons and is ordered to be released, he shall be enlarged on his own recognizance or on his giving an undertaking to appear when required, unless for reasons to be recorded, the court orders otherwise.’

⁹⁷⁹ [1988] 1 Sri LR 84

⁹⁸⁰ CA (PHC) APN 27/2016

⁹⁸¹ DOP, *Prison Statistics of Sri Lanka* (Vol. 38 – 2019), p 21

During the course of this study, the Commission was informed of persons being remanded by the Magistrate Court at the first instance, even though they were entitled to be released on bail because the offence for which they had been arrested was bailable; these persons stated they were remanded without a reason provided for the need to remand.

When inquired about what ensued at their first hearing in the Magistrate Court, a number of remandees stated the judge did not speak with them when they were first produced in the Magistrate Court, and they were remanded within a few minutes of being produced. Nor were they told of the reason they were being remanded. Many remandees stated they were asked if they pleaded guilty to the charge and were remanded irrespective of the response. In cases where the remandee had been produced before a Magistrate to obtain a detention order, inmates almost unanimously stated that the judge did not ask any questions before the Detention Order (DO) was granted at the request of the police. The narratives of inmates indicate no questions are asked of the suspect in order to determine the need for pre-trial detention, and he or she was remanded based on the recommendation of the police. Describing the process of being remanded, inmates described it thus:

Q: "What happened on the first day in the court?

A: The lawyer didn't get a chance to speak in the court that day. People from the police were there and they said a lot of things. I couldn't hear much because of my ear. The police said those things while I was in the witness box.

Q: Did you get a chance to talk to the Judge?

A: No, no chance.

Q: Did the lawyer get a chance to talk to the Judge?"

A: No."

Remandee, PCP

"There they kept me outside the room, the Magistrate went inside the room. He was talking in a very loud voice to the police. I requested the police to let me come inside because I also had something to say. They refused. So, they just showed my face to the Magistrate. They said 'we have taken a seven-day DO for you'."

Remandee, CRP

"When you go to courts, they won't ask anything. The judge only looks at the charge and wouldn't ask us any questions. They don't talk. Then they postpone the case for another date and send us to prison. The judge doesn't know anything, so he sent us here. I was limping, but they didn't even look. They don't look at those things. They just want to finish their case and send the

people quickly. When there are lots of people in court, they won't check who is beaten or limping. They want to quickly finish the cases."

Remandee, GRP

In the Supreme Court case of *Weerawansa v AG and others*, in determining the significance of a suspect being produced before a judicial officer, it was held that, 'two things are essential: the suspect must be taken to where the nearest competent judge is, or that judge must go to where the suspect is, and the suspect must have an opportunity to communicate with the judge. If those conditions are not satisfied, the judge would have no jurisdiction in respect of that suspect, to make a remand order.'⁹⁸² Detainees stated that in practice they had very little or no time to present their case before remand was extended. Remandees stated that their inability to speak with the judge is distressing, particularly for foreign nationals who are vulnerable in the prison system, as they have no knowledge or experience of the judicial process and most often no family, friends or even lawyer in Sri Lanka. Since they have extremely limited contact with the outside world in remand prison, and often no-one to facilitate such contact, they believe the only opportunity they have to express their grievance and obtain relief is when they appear before a judge. Hence, when they do not have the opportunity to speak to the judge during their biweekly court appearances, and their remand is extended within a matter of minutes, their distress is exacerbated.

The Commission came across a number persons remanded by the Magistrate Court, predominantly charged under Section 54A of the Poisons, Opium, and Dangerous Drugs Ordinance,⁹⁸³ for offences such as possessing, selling, supplying or smuggling heroin, which are non-bailable⁹⁸⁴. It should be noted that the penalty for the offence of possession⁹⁸⁵, which was a fine of maximum ten thousand rupees and/or imprisonment for a period not exceeding five years at the Magistrate's Court, and a fine of maximum twenty-five thousand rupees and/or imprisonment for a period not exceeding seven years at the High Court in the

⁹⁸² SC Application No. 730/96

⁹⁸³ Poisons, Opium, and Dangerous Drugs Ordinance Act No. 13 of 1984, s 54A (1), 'Any person who (a) manufactures any of the following dangerous drugs, namely heroin or cocaine or morphine or opium shall be guilty of an offence against this Ordinance and shall on conviction by the High Court without a jury be liable to a sentence of death or life imprisonment; (b) except as permitted by or otherwise than in accordance with the provisions of this Chapter or a license of the Director, traffics in any dangerous drug set out in Column II of Part III of the Third Schedule in excess of the amount set out in the said Column II shall be guilty of an offence against this Ordinance and shall on conviction by the High Court without a jury be liable to the penalty set out in the corresponding entry in Column III of that Part; (c) except as permitted by or otherwise than in accordance with the provisions of this Chapter or a license of the Director, imports or exports any dangerous drug let out in Column II of Part III of the Third Schedule in excess of the amount set out in the said Column II shall be guilty of an offence against this Ordinance and shall on conviction by the High Court without a jury he liable to the penalty set out in the corresponding entry in Column III of that Part; (d) except as permitted by or otherwise than in accordance with the provisions of this Chapter or a license of the Director, possesses any dangerous drug set Out in Column 11 of Part III of the Third Schedule in excess of the amount set out in the said Column II shall be guilty of an offence against this Ordinance and shall on conviction by the High Court without a jury be liable to the penalty set out in the corresponding entry in Column III of that Part.'

⁹⁸⁴ ibid s 83, No person suspected or accused of an offence under section 54A or section 54B of this Ordinance shall be released on bail, except by the High Court in exceptional circumstances.

⁹⁸⁵ Poisons, Opium, and Dangerous Drugs Ordinance Act No. 13 of 1984, s 52

Act, was made death or life imprisonment in the 1984 Amendment to the Act, which in Part III of the Third Schedule stipulates that the offence of possession, trafficking, importing or exporting a minimum of 500g of opium, 3g of morphine, 2g of cocaine and 2g of heroin carries the penalty of death or life imprisonment. As the offence of possession carries a punishment of death, bail cannot be obtained except at the High Court, as per the Bail Act.⁹⁸⁶ Thus, persons remanded for the aforementioned offences would experience continued extension of remand without being indicted until the report of the Government Analyst Department (hereinafter referred to as GAD) is issued and/or bail is obtained at the High Court. The report of the GAD would state whether or not the substance is a banned narcotic and declare the true quantity of it as evidence which would be presented in court by the police. As a jailor of NMRP stated:

“About 90% of the prisoners in NMRP are in prison due to drug related cases. If the bail conditions can be reconsidered, about 50% of the population in NMRP will be reduced. Remandees are stuck here because they didn’t get bail, because their GA reports haven’t come. These things drag on for months unnecessarily. Police always object to giving bail, even without any due reasons. What is the point in sending a person with a drug addiction problem to prison?”

The 1984 Amendment to the Poisons, Opium, and Dangerous Drugs Ordinance classifies the offence of possession and trafficking as grave offences. In this regard, a representative of UNODC in Sri Lanka reiterated the need to distinguish between a drug user in possession of heroin for their own use and a dealer of the same drug. Furthermore, it was noted that once the GAD report determines the quantity of heroin found in the inmate’s possession, persons found with less than 2g of heroin would be required to pay a fine or are convicted in lieu of a fine, while inmates possessing a quantity higher than 2g would be remanded further, potentially until the conclusion of their trial, and could be sentenced to death or life imprisonment if found guilty.

Remanding persons for extended periods under Section 54 may not have an impact on the wider purpose of curbing the crime of drug smuggling, as illustrated by the narrative of an interviewee. He stated that, “the sitting judge shouted at the police and told them not to arrest us as we are merely agents. He asked them to arrest the people who give us heroin. He said that it’s the only way these things can be stopped”. Regardless, this individual was still remanded for fourteen days and had been in prison for five months at the time he spoke to the Commission.

52% of the prison population in Sri Lanka consists of remandees, illustrating the number of persons in pre-trial detention, which raises questions whether bail is being granted as per

⁹⁸⁶ Bail Act (No. 30 of 1997), s 13 ‘a person suspected or accused of being concerned in committing or having committed, an offence punishable with death or with life imprisonment, shall not be released on bail except by a Judge of the High Court’.

the legal provisions. The Task Force Report⁹⁸⁷ identified the limited use of bail as a factor that contributed to prison overcrowding and recommended the use of police bail, whereby police officers can release persons who have committed bailable offences, on an undertaking to appear before the Magistrate on a given date, as per Section 6 of the Bail Act. The report of the Task Force highlights that the number of remand prisoners is equal to the number of convicted prisoners⁹⁸⁸ which could be reduced by the increased use of police bail. Highlighting the link between refusal of bail and prison overcrowding, a senior prison official commented thus:

“The problem with places like CRP is there are people who shouldn’t be in prison. For minor offences like fighting in the neighborhood – they are remanding people. Instead they can get police bail, be placed under probation and be sent back. There is no need for the case to even go to the court. Our Magistrate Courts are filled with unnecessary cases. What’s the reason for remand? We think a person may pose a risk to someone or something and so we need that person behind bars until investigations are over etc. If we just remand this and that person and everyone in the neighborhood - if the first instinct is to remand – of course remand prisons will be overflowing.”

As was recommended by the head of a legal aid organization, Mr. K. Tiranagama, ‘Legislative reforms should be considered to limit exceptions to the Bail Act (i.e. non-bailable offences) to ensure there is a uniform series of checks and balances on pre-trial detention.’⁹⁸⁹ This is in line with the requirements of international law which states ‘pretrial detention should not be ordered for a period based on the potential sentence for the crime charged, rather than on a determination of necessity’.

2.2. Bail conditions

International standards stipulate that bail conditions are to be used as an alternative to pre-trial detention where the conditions imposed can counter the risk associated with bail (i.e. non-appearance at trial).⁹⁹⁰ However, the conditions imposed must be assessed on an individual case-by-case basis and ‘onerous conditions should be reserved for those who are flight risks or who pose a significant threat to society’.⁹⁹¹ The Monitoring Committee of the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter referred to as CERD) also requires that ‘the requirement to deposit a guarantee or financial security in order to obtain release pending trial is applied in a manner

⁹⁸⁷ ‘First Report of the Taskforce on Judicial and Legal Causes for Prison Overcrowding and Prison Reform’ issued on 09 November 2016.

⁹⁸⁸ At the time the First report was released, the number of remandees were roughly equal to the number of convicted prisoners. The number of remandees has since increased.

⁹⁸⁹ K. Tiranagama, ‘Right to a Speedy Trial and Law and Practice Relating to Bail in Sri Lanka’ *Lawyers for Human Rights and Development* (February 2012)

⁹⁹⁰ UN Human Rights Committee, *General Comment No. 35 - Article 9: Liberty and Security of Person* 16 December 2014, CCPR/C/GC/35, para 38.

⁹⁹¹ Irish penal Reform Trust, ‘IPRT Position Paper 11: Bail and Remand’ [November 2015], p 7.

appropriate to the situation of persons in vulnerable groups, who are often in straitened economic circumstances, so as to prevent the requirement from leading to discrimination against such persons'.⁹⁹²

If the purpose of bail conditions is to mitigate the risks of allowing a suspect out on bail, then the reasons for the imposition of stringent bail conditions that cause the suspect to remain further in custody for an indeterminate period of time must be examined.

Section 7(1) of the Bail Act lists the conditions of bail upon which a suspect may be released from prison. This includes,

- (a) on an undertaking given by him to appear when required;
- (b) on his own recognizance;
- (c) on his executing a bond with one or more sureties;
- (d) on his depositing a reasonable sum of money as determined by court; or
- (e) on his furnishing reasonable certified bail of the description ordered by court: provided that where the person has appeared before court on summons and is ordered to be released, he shall be enlarged on his own recognizance or on his giving an undertaking to appear when required, unless for reasons to be recorded, the court orders otherwise.

Inmates charged with bailable offences stated they were detained in prison despite having been awarded bail, as they could not satisfy the imposed bail conditions. One interviewee informed the Commission that she was still in prison, five years after bail had been awarded to her, as she was not able to satisfy bail conditions. A pattern that emerged from the data obtained during this study is the inability of remandees to secure sureties as required by the court. One remandee who has spent more than a decade in pre-trial detention despite being awarded bail, stated:

"I have been in prison as I could not produce the sureties. If I could do it, then I would have gone out by now. I have spoken with a few people. I want to request from the court to reduce my bail conditions. I have to produce two people who have a twentyyear residence in XXXXXX. Mother talks with me, but she is not allowed to do anything by her new husband. She is neither allowed to go anywhere nor visit me."

Remandee, ARP

As stated by another inmate from MCP, arrested on charges of polygamy, "I was asked to present four blood relatives but I only have my father and no one else. My lawyer informed the court about this, but my bail was not reduced. It has been more than two months since I

⁹⁹² UN Committee on the Elimination of Racial Discrimination (CERD), *CERD General Recommendation XXXI on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System*, 2005, para 26.

was imprisoned." Some remandees stated they were required to produce two sureties from the place where they were produced in court, which proved to be difficult when this was not their home town. As described by one inmate:

"I'm from Kotahena, Colombo. Therefore, it is quite difficult for us to find a surety from Jaffna. The surety has to be a resident of Jaffna but my whole family is from Colombo. Hence, it is impossible for me to get bail from Jaffna. Some people asked me to pay someone and get bail but even for money, nobody will come because I'm not from here, they don't know who I am or where I am from."

Remandee, JRP

These cases are a few of the many instances which demonstrate that imposing harsh bail conditions has led to the development of an informal bail bond industry, where persons who have no connection to the defendant can be hired to appear as sureties. It must also be pointed out that persons without the financial means would not be able to pay others to appear for them as sureties.

Another pattern that emerged is the inability of defendants to secure public servants as securities when ordered to do so by the judge. As described by one interviewee, "I can't get bail Miss. They granted bail - for one of the three cases; the guarantor has to be a government servant and also, personal bails and a monetary bail of one lakh, fifty thousand. Since there are three bail conditions it is difficult to post it".

In the case of *Attorney General v Thanthirige Nishantha Rohitha Jayalat and others*⁹⁹³, it was held that 'it is comparatively rare for an accused to keep away from court when meaningful sureties are in place. This is the advantage of bringing in family members or close friends into the scene than to simply depend on Government Servants as sureties which may appear to be a meaningless exercise that was not heard of in the past.'

In one instance, an inmate arrested for the default of loan payments was awarded a combination of surety and monetary bails and thus had to find multiple sureties for the many cases against her in order to be released on bail. When individuals are arrested for defaulting loan payments, the purpose of awarding monetary bail to be released from remand seems counterproductive when the offence itself may have been committed due to a lack of financial resources. It has been observed that impoverished women and women from war affected areas are specifically susceptible to the debt trap as 'it is common to see women with three or four outstanding loans from different lenders at the same time, while some others borrow more to avoid defaulting on the loans they already have'⁹⁹⁴, for which they may also be threatened with imprisonment or subsequently arrested after a complaint is lodged by their creditors. As sole breadwinners of their households, when these women are remanded

⁹⁹³ CA (PHC)APN No: 133/12

⁹⁹⁴ United Nations Sri Lanka, 'End of Mission Statement – UN Independent Expert on the Effects of Foreign Debt and Human Rights' (11 September 2018) < <https://lk.one.un.org/news/end-of-mission-statement-un-independent-expert-on-the-effects-of-foreign-debt-and-human-rights/>> accessed on 13 January 2019

for defaulting loan payments, it has a severe adverse impact on the livelihood of their dependents and increases their financial vulnerability as they are not earning during their time in remand, which in turn has a severe impact on their mental well-being:

"I had borrowed Rs. 350, 000 from a person and with the interest it had come up to Rs. 650,000. I paid Rs. 450,000 and only had Rs. 200,000 left to pay. They arrested me for Rs. 200,000. I am just sad we have been pushed to such a situation, which no one in my family has ever faced. I haven't seen my child in 6 months."

Remandee, KRP

Economically marginalized or impoverished individuals would be placed at a disadvantage and most often were found to be unable to fulfill the monetary conditions, thereby leading to the deprivation of their liberty being caused by their financial status rather than a reason established in law.

In another case, three remandees stated they were unable to go on bail because they were not able to produce a Grama Sevaka certificate for the rented house they were presently inhabiting. Still others complained they were unable to fulfill the bail conditions because they were required to produce police certificates which, without any family visits and means of communication in prison, they were unable to arrange. The Commission received complaints in writing from sixty four remandees who stated they had been awarded bail but were not able to satisfy the stringent conditions and were requesting assistance in this regard.

The Tokyo Rules also require that the remandee has 'the right to appeal to a judicial or other competent independent authority in cases where pre-trial detention is employed'.⁹⁹⁵ Remanded persons wishing to appeal their bail conditions would find themselves in a precarious position while in detention because a motion to change bail conditions cannot be filed without a lawyer. While in prison, the remandee has minimum contact with the outside world due to a lack of communication facilities⁹⁹⁶ and thus, would not be able to procure a lawyer without the assistance of family or a local contact, which exacerbates the vulnerability of foreign nationals and remandees who have been detained in prisons far away from their home towns.

The Release of Remand Prisoners Act No. 8 of 1991 applies to persons who have been granted bail but are unable to fulfill its conditions; if they have been in prison for over one to three months, as per Section 3 the court is allowed to release the accused upon the person executing a bond without sureties.⁹⁹⁷ The same provision also requires Magistrates to visit prisons and release eligible persons, which will enable those who have no family or means to contact or enlist a lawyer to file a motion to secure their release. As one inmate stated, "Now madam, I have no one here to sign. There is no way for me to communicate that I have

⁹⁹⁵ Tokyo Rules 1994, r 6

⁹⁹⁶ For a detailed discussion on the availability of communication facilities in prisons, please refer chapter Contact with the Outside World.

⁹⁹⁷ The Release of Remand Prisoners Act No. 8 of 1991, s 3

been granted bail and I don't know anyone in this town." Despite these provisions that seek to enable the release of persons unable to furnish bail, the Commission found that such provisions are underutilized. For instance, although the Commission was informed of judges visiting a number of prisons to release persons who have been awarded bail but could not furnish bail conditions, the resultant procedure can still take a number of weeks before an inmate is finally released.

The CGP issued a circular⁹⁹⁸ in 2015, following a discussion with the Task Force for Legal and Judicial Causes for Prison Overcrowding, which requires SPs to act upon Section 3 of the Release of Remand Prisoners Act No. 8 of 1991 and send detailed reports to the Commissioner of Operations of the DOP about the number of prisoners released every month through the use of this provision. The interim report by the Task Force highlights the need to comply with the provisions of the Release of Remand Prisoners Act, which was enacted to ensure 'persons are not remanded for undue lengths of time unreasonably thereby leading to congestion in places of detention and violation of fundamental rights of remandees'.⁹⁹⁹ Despite these provisions in place, the Commission received numerous complaints and requests regarding assistance to post bail.

When discussing the functioning of the criminal justice system, a number of stakeholders discussed the need to provide judicial officers with multi-disciplinary training, and strongly advocated for raising awareness about the problems faced by pre-trial detainees to initiate an attitudinal shift with regards to pre-trial detention in order to ensure pretrial detention is only imposed as last resort and bail is granted as a rule and not an exception.

3. Pre-trial detention

3.1. The indeterminate extension of remand

'The negative effects of excessive pretrial detention that are enumerated above— torture, corruption, the spread of disease, undermining the rule of law—are, in and of themselves, bad outcomes. They also contribute to the socioeconomic impact of pretrial detention, albeit in ways that are difficult to measure. What are the costs to society when the innocent languish behind bars because of corruption? How does one measure the lost potential when torture destroys a victim's body and spirit, leaving him unable to work after release? What price does a community pay when one of its members returns from pretrial detention carrying tuberculosis? While it is difficult to put a price tag on these negative outcomes, the following section makes clear who pays: the poor and marginalized.'

The Socioeconomic Impact of Pretrial Detention – Open Society Justice Initiative

⁹⁹⁸ Department of Prisons, Circular No. 34/15

⁹⁹⁹ First Report of the Task Force on Judicial and Legal Cause for Prison Overcrowding and Prison Reform

Article 6.2 of the Tokyo Rules states that ‘alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under Rule 5.1 and shall be administered humanely and with respect for the inherent dignity of human beings.’ Furthermore, the UN Human Rights Committee, during the 44th session of the General Assembly, ‘implied that a six-month limit on pre-trial detention was too long to be compatible with Article 9(3) of the ICCPR’.¹⁰⁰⁰

In the case of *Wickramasinghe v AG*¹⁰⁰¹, it was held that a suspect charged with a bailable offence and has been in remand for a period exceeding twenty-four months must be released on bail. Justice De Abrew further stated:

The contention that a suspect/accused who completes two years on remand will be arrested on the following day of his release on bail for an offence that may be committed by him and therefore he should not be released on bail is, in my view, untenable because in such an event it is the duty of the prosecution to have the case concluded within a period of two years.¹⁰⁰² ...the purpose of remanding a suspect/accused is...to ensure his appearance in court on each and every day that the case is called in court. If the court feels that that he would appear in court after his release on bail, court should enlarge him on bail. Court should not remand a suspect/accused in order to punish him.¹⁰⁰³

During the course of this study, the Commission noted numerous instances of persons having spent an extended period of time in remand prison, some even without being indicted, with no indication of when the pre-trial detention period would be complete, and/or bail would be awarded. According to the 2019 statistics issued by the DOP, almost 15% of all remandees had spent more than one year in remand custody.¹⁰⁰⁴

Remandees describing proceedings at the Magistrate Court frequently stated that due to the large number of suspects being presented at any one instance, each individual is afforded a mere few minutes in front of the judge when their remand is extended for another fourteen days with some remandees reporting their remand is renewed even before they are able to step out of the detention cell. As remandees described it:

“They put us in those cells and take off the handcuffs there and once it’s our turn, they take us out. Usually what happens is that you just put one foot out and the next minute you are again sent back. So, you never go up to the Magistrate in the front. It means that they open the door, you have to come

¹⁰⁰⁰ United Nations Centre for Human Rights Geneva and Crime Prevention and Criminal Justice Branch Vienna, *Human Rights and Pre-trial Detention: A Handbook of International Standards relating to Pre-Trial Detention*, 1994, Professional Training Series No. 3

¹⁰⁰¹ CA (PHC) APN: 39/2009, decided on 04 March 2010

¹⁰⁰² ibid Justice De Abrew

¹⁰⁰³ CA (PHC) APN: 39/2009, decided on 04 March 2010

¹⁰⁰⁴ As at 31st December 2018 - DOP, Prison Statistics of Sri Lanka (Vol. 38 – 2019), p 23

out, the judge will see you and you are sent back. You are not taken to the witness box or anything."

Remandee, NRP

"We don't even get to talk. When we enter the dock the lady judge gives a date and we are sent back. Sometimes we don't even get to enter the dock, before the next court date is given and we are sent back."

Remandee, KRP

Hence, it appears that the inquiry to ascertain whether the need to extend remand exists before remand is extended does not take place. International standards stipulate the necessity of periodic review of pre-trial detention in order to ascertain the legality of the pre-trial detention period.¹⁰⁰⁵ This raises the question whether this practice constitutes judicial review, as set out in the law where a court may 'decide without delay on the lawfulness of his or her detention and order his or her release if the detention is found to be unlawful'.¹⁰⁰⁶ As one inmate stated, "nothing is happening at the Magistrate Court, they just want to see if we are alive." Another inmate stated:

"So I try to raise my hands to... every time I raise my hands, they don't even see us. It's like we're just standing there like a brick. Like a stone and we want to know what's going on. It's our right to know what's going on in the court and we have every right to ask..."

Remandee, CRP

Remandees stated they have often requested permission to speak to the judge with little success. In the study, 35% of the male remandee respondents and 23% of female remandee respondents stated they had requested to speak to the judge in the Magistrate Court. Of those who had so requested, only 22% of the male and 18% of the female remandees said their request was granted. While foreign nationals reported having their requests to speak with the judge granted more often than local inmates, a number of local prisoners reported that their requests were not heeded.

When the Police Department continually states the investigation is not complete, it seems in practice remand periods are most often extended automatically every fourteen days. The indeterminate number of times the remand period may be extended for a remandee charged for a non-bailable offence could amount to arbitrary detention, for example, 22% of the PTA remandees in the sample has been in prison for more than ten years.

A lengthy period of remand is in itself incompatible with Article 9 of the ICCPR and may lead to arbitrary deprivation of liberty. International standards dictate a remand period may be authorized by domestic law but could still in fact amount to arbitrary detention, as 'the notion of "arbitrariness" must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements

¹⁰⁰⁵ ICCPR 1966, art 9(4)

¹⁰⁰⁶ UN Commission on Human Rights, *Habeas corpus*, 28 February 1992, E/CN.4/RES/1992/35

of reasonableness, necessity and proportionality'.¹⁰⁰⁷ Thus, while restricting bail for suspects accused of committing non-bailable offences is prescribed in law, and hence is 'lawful', international guidelines indicate that where the remand period does not satisfy elements of reasonableness, necessity and proportionality, it may become arbitrary over time.

3.2. Administrative delays

Multiple complaints were received by inmates about delays in police investigations and processing of files at the AG's Department which decides whether there is adequate evidence to issue an indictment. A remandee stated that the police concluded his investigation seven months prior to the time of the interview (July 2018), and although they were not able to produce any evidence against him, he continues to go to court every fourteen days while his case file has been sent to the AG's Department. The Commission came across a number of individuals who stated their files have been held up at the AG's Department as described by inmates as follows:

"I have been in prison for two years and six months but I still have not been given bail. The investigation is complete and the file is sent to the Attorney General. Still waiting for AG's report."

Remandee, NMRP

"The Attorney General's report still hasn't come. For that, even if we tell the judge to send a reminder to the Department, the judge won't even take it into consideration. As if he has a personal grudge, he is angry with everyone."

Remandee, KRP

Another process that leads to delays in the legal process is 'no dating' the case. This takes place when a case cannot proceed due to a technical issue due to which the next trial date will not be scheduled until the issue is rectified. Until then the remandee remains in prison. The Task Force Report¹⁰⁰⁸, discussed 'No Date' cases. The report notes that case files are sometimes misplaced within the system, particularly when the Magistrate Court does not have the jurisdiction to try a particular case, and the case has to be referred to the AG for decision on whether to indict at the High Court or discharge the person. Thus, when the files are not found in the AG's Department, the judge will 'No Date' the case as it cannot proceed without the case file. This results in the remandee remaining in pre-trial detention for a long period of time; 126 such cases were reportedly brought to the notice of the Task Force.¹⁰⁰⁹ In an interview with the former AG, it was mentioned that the reason for delays could partly be attributed to the lack of resources and officers at the AG's Department. However, such procedural delays that cause a delay in the administration of justice can adversely impact the fundamental right to a fair trial. The human resources shortage would have been

¹⁰⁰⁷ UN Human Rights Committee, *General Comment No. 35 - Article 9: Liberty and Security of Person* 16 December 2014, CCPR/C/GC/35, para 12

¹⁰⁰⁸ First Report of the Task Force on Judicial and Legal Cause for Prison Overcrowding and Prison Reform

¹⁰⁰⁹ ibid, s 2(I)(c)

addressed following the approval granted to the Department for the creation of one hundred new posts for state attorneys in 2017¹⁰¹⁰.

Another administrative delay that leads to persons spending extended periods in remand is delays in the submission of reports by the Government Analyst Department (hereinafter referred to as GAD) to court, particularly in drug-related cases, where a decision regarding indictment can only be made once the GAD report is produced in court, during which period the suspect remains in remand. The time taken by the GAD to produce a report in court, for instance on the drugs found or physical evidence in the suspect's possession, is also a factor that directly impacts the time spent by an individual in pre-trial detention. The police hand over goods confiscated from the suspect to the GAD, after which it is the GAD's responsibility to provide the report. It should be noted however that there is no law mandating the period within which the police have to hand over confiscated goods to the GAD; they are only required to hand them over 'as soon as possible'. Similarly, there is no law mandating the time period within which the GAD is required to issue their report on the confiscated goods. An officer of the GAD informed the Commission that they receive the evidence with a covering letter from the Court which requires them to produce the report within one or two weeks. However, he stated the GAD has a backlog of about 10,000 cases, as they receive about 3000 cases per month, and are suffering a shortage of staff and resources, and hence it can take any time between two months to one year for the report to be issued. This is consistent with the accounts presented by the inmates, which indicate it can take anytime between four months to one year for the report to be issued.

These administrative delays lead many prisoners (particularly foreign nationals) to plead guilty so as to expedite the process, and thereby conclude the case because while the sentence is a definite term to be served, the remand period could be indefinite. Inmates described it as follows:

"They have been prolonging the remand period every fourteen days for the past six years, and no proper decision has been made yet. They inquired from me in the beginning but there has been no inquiry for the last six years. I just keep going and coming."

Remandee, BATRP

"Send me to my country please, give me a sentence. Send me to my family. I tell this to the judge. I don't want to die here."

Remandee, NRP

The remark of a former CGP that there exists a tendency to use remand as a punishment because of social expectation, particularly where certain offences, such as rape are concerned, points to a possible reason that lengthy periods of pre-trial detention are not addressed as a shortcoming of the criminal justice process. Remanding hence is viewed as a means of punishing the alleged perpetrator immediately.

¹⁰¹⁰ Performance Report, Attorney General's Department, 2017.

4. Prolonged trials

"Having spent years in courts, I will only go back home in a box."

Delays in trials causing a case to potentially continue for fifteen to twenty years is a common pattern noted within the Sri Lankan criminal justice system. During this time the accused, if refused bail, would be in prison.

A recent case decided by the Supreme Court of India¹⁰¹¹ sets out the importance of ensuring that pre-trial detention is not unduly long. The Court stated that, 'The deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 (of the Indian Constitution) which protects personal liberty.' The decision further stated that, 'While deprivation of personal liberty for some period may not be avoidable, the period of deprivation pending trial/appeal cannot be unduly long. Timely delivery of justice is a part of human rights. Denial of speedy justice is a threat to public confidence in the administration of justice.' The same judgment also states that, 'Speedy trial is a part of reasonable, fair and just procedure guaranteed under Article 21. This Constitutional right cannot be denied even on the plea of non-availability of financial resources. The court is entitled to issue directions to augment and strengthen investigating machinery, establish new courts, build new court houses, provide more staff and equipment to the courts, appoint additional judges, and other measures as are necessary for a speedy trial.'

The Commission was informed by interviewees that one of the causes for the delays is the frequent transfer of judges as well as the non-appearance of a judge, state counsel or defense lawyer¹⁰¹². As an inmate stated:

"I heard the judge for my case comes from Colombo. At times he does not appear. Then when he is present, the state counsel is absent. Almost all the inquiries are over. Why can't they still come to a decision? They could at least punish me and then I will be released at the end of the sentence. I don't understand why they are dragging the case like this. The judge doesn't even ask anything. When I raise my hand to say something, they just ignore it."

Numerous complaints were received, particularly from condemned inmates and inmates who have experienced a long drawn out appeal process, about the State Counsel not appearing at the hearing, which results in the trial being postponed for another few months:

"It is my opinion that if State Counsels do not evade dates given by the court and appear in court on time, the overcrowding in prisons and the immense suffering of the prisoners will be reduced by 99%."

Condemned, WCP

¹⁰¹¹ *Hussain and ANR. v Union of India* [No. 4437 of 2016] and *Aasu v State of Rajasthan* [No. 348 of 2017]

¹⁰¹² For a detailed discussion on complaints against legal representatives, please refer chapter Access to Legal Representation.

An appellant informed the Commission he was given the death penalty six years ago and the state counsel has since been absent at every single appeal court date, resulting in the case being postponed every time, due to which he still has not had a hearing at the Court of Appeal. Another inmate, who has been on appeal for eleven years stated he has received eighty dates for the Court of Appeal, but he has not had a single hearing. Perhaps one of the longest running cases on record is that of an inmate who received the death penalty after being on trial for twenty-four years and another inmate who has had one hundred hearings. A senior prison officer commented on this saying:

“Look at the problems with our justice system. Let’s say a man kills someone in the heat of passion, when he was twenty five years old. The case is dragged on and on and on till the man is sixty years old when the death penalty is finally pronounced. It takes twenty, twenty five years now to give a sentence. Then the man goes to appeal and has to wait for at least ten more years. What’s the point of the justice system then? I don’t see any justice to the murderer or the victim’s family in this.”

Convicted inmates stated they had pleaded guilty to expedite the court proceedings and some were also disinclined to appeal their verdict because they could not afford a lengthy appeal process.

5. Imprisoned for the non-payment of fines

According to the DOP 2018¹⁰¹³ statistics, 64.8% of the total admissions of convicted prisoners were for the non-payment of fines. During this study, the Commission met inmates serving sentences ranging from six to twelve months because they could not afford to pay fines of LKR 3000 - 6000. The Task Force Report also raised this issue, citing the need to allow the staggered payment of fines, instead of imprisoning persons who are unable to afford the fines due to poverty, as this will allow a large number of prisoners to be released from custody and resolve the burden of overcrowding.

As one inmate from KRP lamented, “For Rs. 3000 they said I have to stay here for six months. Please madam, just help me with this one thing. What is the point of living madam? I’ve never come to the jail before, and now I am forty-nine years and I am here. What is the point in staying alive? I feel like dying.... If I can’t pay the fine then why should I be alive?”

Section 291(4) of the CPC¹⁰¹⁴ states that the Court has the discretion to allow an inmate to pay the fine in installments over a period of time. In an interview with the Commission, a former CGP stated that this provision is rarely used by courts since it requires a case file to remain open for the entirety of period an offender takes to pay the fine, whereas imprisoning the offender would result in the case filed being closed. Pointing to the futility of this, he asserted, “We must imprison only those who deserve to be incarcerated”.

¹⁰¹³ DOP, Prison Statistics of Sri Lanka (Vol. 38 – 2019), p 76

¹⁰¹⁴ Code of Criminal Procedure (Amendment) Act No. 4 of 1995, s 291(4)

Where imprisonment due to the non-payment of fines is concerned, the financial burden placed on the DOP, and thus taxpayers, who bear a higher financial burden when detaining an offender in lieu of payment of a fine, which his socio-economic status prevents him from paying, has been pointed out by a number of stakeholders and prisoners. The same sentiment was also expressed by the former CGP who stated that the DOP shoulders the cost of an offender who cannot afford the fine, thus increasing the burden on the prison and causing overcrowding. It must be pointed out that, according to the DOP Statistics, the average daily cost per prisoner in the year 2018 is approximately Rs. 695, amounting to Rs. 253,608 per prisoner each year.¹⁰¹⁵

In such situations, especially where a first offender is concerned, the use of non-custodial measures as an alternative to imprisonment could ease the burden and costs of overcrowding, and relieve the first offender from suffering the detriments of incarceration including stigma, financial hardships due to the loss of income and the risk involved with exposure to long-term criminals and offenders.¹⁰¹⁶ The impact on prisons of persons being sent to prison in lieu of paying fines was commented upon by a jailor of WCP who stated:

“From Maligakanda Court itself about fifty to sixty prisoners come every day. The majority of them are for drug dependency or consumption or little amounts or possession or else for things like *kasippu*. The court orders a fine and in lieu of the fine a prison sentence. So all these prisoners are sent here. So we have to open a file, register them, go through all the procedures and then in like a week, many of them leave, because they somehow manage to pay the fine. Since they are for such short sentences, there is no point in even sending them to a work camp. By the time we arrange for an escort to a camp, it takes like fourteen days. A prisoner sentenced to a month will only have to serve fifteen days. We can't send him to a camp for one day, can we?”

The Commission came across a number of inmates who were convicted due to the nonpayment of child maintenance, who complained about the accumulation of arrears during their time in prison. Convicting persons without the financial ability to pay for child maintenance further limits their ability to earn an income and thus afford maintenance costs:

“They arrested me and asked me to pay Rs. 100,000 and another Rs. 24,000 and if I fail to pay that, they said I will be imprisoned for sixteen months. I did not have money to pay immediately. Then I said, ‘I will go to prison’ so, I came here and stayed. When I went outside, they said that I have to pay Rs. 95,000 out of the Rs. 100,000 as well as the Rs. 24,000. They have reduced some of the amount as I worked in the prison. Then I paid Rs. 50,000 by taking a loan. I work for Rs. 1000 per day, I have to eat thrice a day with that Rs. 1000 and then I have to save money to pay for maintenance. This is a big problem for me.”

Convicted, ARP

¹⁰¹⁵ DOP, Prison Statistics of Sri Lanka (Vol. 38 – 2019), p 80

¹⁰¹⁶ For a detailed discussion on alternatives to imprisonment, please refer chapter Non-custodial Measures .

"There were arrears which the court asked me if I could pay. I said I could not. So they convicted me for twenty months. They have ordered to pay maintenance every month, Rs. 4000 per month. I cannot pay it when I am inside this prison. Because of that the maintenance gets increased. And I cannot pay it off."

Convicted, KRP

The SP Senarath Senanayake of WRP, expressed similar sentiments and said:

"Prisoners who are in for not paying their debt, the interest increases while they're in prison. So, by the time they're released, their debt has almost doubled; so they commit more crimes to pay that. Abroad, there's a 5% chance of re-imprisonment, while in Sri Lanka, there's a 50% chance. I cannot do my job, well without the society changing first. People need to change first."

6. The inability to understand legal proceedings

A pattern observed among prisoners, both convicted and remanded is their lack of understanding of court proceedings and the status of their case. The Commission even came across individuals who were unsure of the offence for which they had been convicted – some, despite having hired a lawyer. This may be illustrated by the statistical data according to which 28% of male remandee respondents and 23% of female remandee respondents stated they do not know the current status of their court case.

Others, while aware of the offence for which they were charged, had no understanding of what had ensued during their trial. According to statistical data gathered during the study, the highest level of education completed by the majority of female respondents for that question, i.e. 31%, was grade eight and the highest level of education completed by the majority of male prisoners was Ordinary Level examinations (33%). The lower levels of literacy among the prisoner population may explain why a number of prisoners reported to the Commission that they could not comprehend their trial proceedings.

Prisoners often reported that they do not understand the interaction between judges and lawyers during court proceedings with many remandees stating that they find it difficult to hear what is being said when the court is in session. Many prisoners stated that lawyers do not explain the proceedings or the result of the hearing to the defendant, despite being paid to represent the person. Two interviewees sentenced to a year in prison informed the Commission they were unsure of why they had been imprisoned. One of them from NRP stated thus:

Q: "Didn't the judge call you and ask whether you understood what was happening to you?

A: He didn't ask anything like that... he asked us whether we had anything to say. We didn't understand what was happening, to say anything, so we just watched and waited. We didn't understand... so when they asked questions, we didn't understand how to answer also."

In another instance, a prisoner whose case had just concluded, stated the judge had asked him if he accepted the charge, which he proceeded to do, not realizing the question referred to a charge for drug consumption and not assault, as he had assumed. This individual was thus sent to rehabilitation on a court order. No medical test had been administered to ascertain the presence of narcotic substances in the inmate's body before he was sentenced to rehabilitation.

Such accounts illustrate the vulnerability of defendants from lower socio-economic backgrounds who, while at the risk of losing their liberty, may become mere spectators at their own trial, resulting in the potential violation of their due process rights to understand court proceedings and hence the inability to mount a vigorous defence against the charges against them.

6.1. Language of the court proceedings

ICCPR guarantees that the defendant shall have the right to have proceedings conducted in a language he understands, and if not, shall have the right to interpreters at each step. Similarly, Principle 14 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment¹⁰¹⁷ states that an interpreter shall promptly be provided to a person who does not adequately understand the language of those arresting him or of the legal proceedings. The UN Human Rights Committee affirmed 'it is of basic importance in cases in which ignorance of the language used by a court or difficulty in understanding may constitute a major obstacle to the right of defense'.¹⁰¹⁸ Article 18 of the Constitution states Sinhala and Tamil are official languages of Sri Lanka while English is the link language and it is further affirmed in the Constitution, 'the State shall provide adequate facilities for the use of the languages provided for in this Chapter'¹⁰¹⁹, i.e. Sinhala and Tamil.

Numerous prisoners stated they could not understand Court proceedings, as they were not conducted in a language of their proficiency. According to the statistics gathered by the Commission, 23% of male remandee respondents and 13% of female remandee respondents stated the court proceedings were not conducted in a language of their proficiency. As most primary court hearings are conducted in Sinhala¹⁰²⁰, which is the written language of court

¹⁰¹⁷ UN General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, 9 December 1988, Resolution 43/173

¹⁰¹⁸ UN Human Rights Committee (HRC), *CCPR General Comment No. 13: Article 14 (Administration of Justice), Equality before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law*, 13 April 1984, para 13

¹⁰¹⁹ Constitution of the Democratic Socialist Republic of Sri Lanka 1978, art 25

¹⁰²⁰ ibid art 24, states the language of the courts would be the administrative language of that area.

documents where Sinhala is the administrative language¹⁰²¹, those not proficient in Sinhala as well as foreign nationals are at a disadvantage in the Sri Lankan judicial system. As a condemned inmate said:

"I am held at the prison as a condemned prisoner waiting to be hanged and killed. I was given the death penalty by the Badulla High Court. I would like to point out to you that: I, the defendant, am a Tamil speaker. I can't read, write or understand Sinhala but the entire court proceedings took place in Sinhala. I did not understand the testimonies given in the court, the cross examination of the testimonies or what the lawyers said in court. I have asked this letter to be written in Sinhala by a fellow condemned prisoner in L Hall, with the expectation that you would read this [since it is in Sinhala]."

Condemned, WCP

As another inmate from NRP stated:

"From there, the next day, they brought me to court. In the court I told them I don't understand Sinhalese - everything they spoke was in Sinhalese, I didn't understand. I don't speak [Sinhala]. This is why I find myself here in prison. This is my first experience being in prison."

Moreover, it was stated by interviewees that trials are postponed due to the time taken for documents to be translated with the request for interpreters causing delays of up to two years, as was stated by two foreign nationals¹⁰²².

As one condemned inmate from BATRP described it:

"There are quite a few Tamil boys from Jaffna, Mannar, Batticaloa, Trincomalee and Vavuniya and translation is a huge problem we are facing. Without translations they aren't listening to our cases. Sinhala cases which commenced after our cases have had their appeals concluded in six to twelve months."

Another interviewee stated that, "Even if we try to get the documents translated externally, the government lawyers initially say yes but when we bring the translated document, they do not accept it, and they don't want to finish the case."

The language barriers are a struggle particularly highlighted by the majority of inmates detained under the PTA who stated they were unable to follow court proceedings, which were not conducted in Tamil and the requests for translators were not satisfactorily met, if at all. As one inmate stated, "there was no translator. There was just one Sinhala person who knew very little Tamil. The translator himself has placed on record that he has studied

¹⁰²¹ ibid art 22: 'Sinhala and Tamil shall be the language of administration throughout Sri Lanka and be used for the maintenance of public records and the transaction of all business by public institutions of all the Provinces of Sri Lanka other than the Northern and Eastern Provinces where Tamil shall be so used.'

¹⁰²² For a detailed discussion, please refer chapter Foreign Nationals.

Tamil only till grade three or four. So, there wasn't even a proper translator." Another PTA interviewee stated, "Court proceedings took place in Sinhala without a proper translation. After the judge gave the verdict, he said I could show proper reasons for appeal and reduce my sentence. I told him the court proceedings took place in a language which I could not understand, and they had rejected my request to conduct the court proceedings in Tamil - so I am innocent and this sentence is unfair."

Without an interpreter, the defendant will not be able to follow legal proceedings and the submissions of the prosecution. Defendants who are not proficient in the language spoken by their lawyer in court will not comprehend the submissions made by the lawyer on their behalf, which prevents them from holding the lawyer accountable, thus increasing their vulnerability in a court of law.

Given the national languages of Sri Lanka are Sinhala and Tamil, the difference in the length of judicial proceedings and additional delays due to the inability of the State to adhere to the national language policy could potentially deprive a person of his/her right to a fair trial and amount to being unequal before the law.¹⁰²³

7. Transfer to court

"The whole day goes badly. We are really humiliated. When someone goes to sleep after coming back from the Magistrate Court, he wakes up the next afternoon. He is so tired. He goes through such a bad experience."

Remandee, CRP

A number of complaints were received regarding the transfer and treatment of prisoners to court and during court proceedings.

Section 252B of the SRs outlines the guidelines for use of mechanical restraints when a prisoner is taken from one place to another. As stated in the legislation and observed by the Commission, one handcuff is used to restrain a pair of prisoners and a gang-chain, comprising single wrist cuffs may be used when many prisoners are being transferred at the same time. Such methods are primarily used when unconvicted prisoners are transferred to the Magistrate Court and a number of remandees reported to the Commission that being transferred in this manner is quite painful.

Although the Commission has witnessed male inmates being restrained during transfer to courts, female prisoners were never seen handcuffed during court visits, and this was confirmed by female interviewees. Prisons that house both male and female prisoners transfer both to court on the same bus, with the front rows designated for the female prisoners. Circular 47/90 stipulates the segregation of children and adults during transfers.

A number of risks are associated with binding all the inmates onto one gang-chain during a journey to court. As one inmate described it:

"The problem is handcuffs. If bus tips over in an accident, we might lose our arms. There is a stream near our village. Many vehicles have fallen into that stream. If the bus rolls into that... if they put one handcuff on a pair of us, then if one can swim, the other could also be saved. When all of us are tied to the same chain, everyone might go down. We think of that when we are driving on that road. The bus passes that stream in an electric shock speed. We cannot even keep our eyes open. In such a situation, if the bus falls into the stream, there is nothing to do, as we are all chained together. We all will be dead when the bus drowns in the water. Officers will jump out, if they want, because they are not chained."

Remandee, BRP

A number of complaints were received about prison buses being overcrowded when multiple remandees are transferred to the court and even elderly prisoners are required to stand the entire duration of the journey – "you know broiler chicken? When they bring it, they have twenty to forty chicken put inside the net? That's how they take us," said a remandee from CRP. Inmates taken for their court case to Colombo from prisons outside Colombo stated they suffer a lot of difficulties during the lengthy journeys. As stated by appellants held in Pallekele, describing their five hour bus journey to court:

"If we leave in the bus at about 0530h in the morning, we will reach there around nine. They normally put handcuffs on ten people at once so we cannot sit properly on the bus. We cannot complete our calls of nature while the bus is moving and they ask us to urinate in a bottle. They don't give us drinking water. We are given food at about eight in the morning and we will be starving until we get back here in the evening at six."

As stated by another inmate, "when they take us to Anuradhapura, they put forty people in bus, which has the seating capacity for twenty people. Sometimes we get a seat, sometimes we do not. So then we have to stand during the entire six hour journey. This happens on a regular basis." The situation was commented upon by a jailor of WCP, who complained about the lack of funding and resources provided to the DOP:

"There aren't enough vehicles, there aren't enough busses. So we have to load sixty prisoners to a bus that is built to transport thirty prisoners. We do know that is not what should happen but is there a choice?"

When Commission inquired the reason remandees are required to remain at the courts complex all day on court dates, when their cases are concluded in a few minutes, an officer of the CRP Escort Branch responded:

"About five to six buses go to the Hulftsdorp complex every day. Only one bus is kept there waiting, the rest comes back to the prisons to run other errands like clinic duty. They can't afford to keep waiting vehicles in court. Then they have to run the buses here and there to pick up prisoners from court again, to pick up prisoners for escort to other prisons etc."

Officers of the CRP Escort Branch also informed the Commission that sometimes prisons outside of Colombo prison administration, have no choice but to transfer prisoners on public transportation due to the lack of prison vehicles. Weapons are not allowed in such contexts, due to which condemned and special prisoners are not transported using public transport as they require armed escort. Being taken on a public bus, in the area of their hometown where they may come in contact with acquaintances while in handcuffs, was reportedly a source of anguish for many prisoners. As a convicted prisoner from KGRP highlighted:

"I was taken in a public bus. There were two officers and I was handcuffed. Sir, I felt so helpless. When we are taken in a public bus we become so helpless, because there may be people and children who know us. It was an uncomfortable situation. I was wearing short pants and I was handcuffed. I was mentally affected in that situation. I bear all these things because of my children. Even though I could not get a good life, I want to give a good life to them. That's who I think of. However, such kind of situation makes us cruel. If one of my wife's friends saw me, then I get an urge to escape from the bus. Even though we informed these things to them, they do not care. It will be of great help if you can take action to stop these inmates being transported in public buses."

8. Detention conditions at the Magistrate Courts

Interviewees also complained about the detention cell inside the Magistrate Courts where unconvicted persons are locked until the day's proceedings are concluded. Up to a hundred remandees can be locked in the cell depending on the court's caseload and most remandees would have to remain standing due to the lack of space. Handcuffs are removed when inmates are locked inside the court cell. Some court cells do not have working toilet facilities so inmates stated they have to use a plastic bottle to relieve themselves. As is the case in cells which contain a toilet bowl, this has to be done in the presence of all occupants of the cell, without any privacy. No water is provided to inmates for hygiene and sanitation purposes. Inmates also frequently complained they are not allowed to talk to their family members while they are in court. As a remandee from KGRP described it:

"At around 0830h or 0900h they take us to courts from there. We have to walk there. Sometimes only they take us by bus, sometimes we have to walk. Once we go there, inside the prison they don't give anything, not even a water bottle. We are also human beings. If we ask for water bottles, they don't give us. After we come to courts, we have to eat the food, which is provided by them. Normally, the food they give us would only be enough for a ten or twelve year-

old child. We at least need three or four of those packets to fill our stomach. The problem is in courts. They don't need to give us good food. We won't die if we skip one meal but they should give ten minutes to talk to our families. How else can we get to ask 'What they said to the lawyer? Whether you spoke to them? Did you eat? Did you drink?' I have to talk to my family, I have children too. They don't let us say anything. We can't talk."

Food is required to be provided to inmates during court recess and this service is usually contracted to an external agency, as stated by a Commissioner at the Prison's Department. Most of the prisoners interviewed also confirmed they receive lunch while they are held in the court cell, although they do not have constant access to drinking water. A PTA inmate whose experience was different, stated:

"If they take forty people to Valaichchenai courts they get Rs. 100 each for food. What the officer-in-charge does is, he doesn't buy anyone food - he puts the Rs. 4000 into his pocket. The officer then tells someone from amongst the prisoners, 'you are wealthy, why don't you buy food'- some eat what they receive from their families."

Some female remandees held in WCP stated they are not given food while they are in the court cell and a female remandee also stated food was not provided for her baby in Court. At the same time, they alleged that persons with the financial means are able to pay gratuities to the prison officers to buy food for them from outside, while the women who cannot afford to do so have to remain hungry.

9. General observations

The majority of prisoners in the prison population are not convicted persons, who may spend many years deprived of their liberty despite not being found guilty of a crime. The long years spent by pretrial detainees awaiting trial or lengthy trials that take years points to shortcomings in the criminal justice system. Without access to legal representation to request bail or reduce bail conditions, persons on remand who cannot afford to hire lawyers have to remain in remand for an indeterminate period of time.

The various shortcomings in the criminal justice system mostly affect persons of lower-socio economic backgrounds. The tendency to remand, without a justified cause or stated reason, which appears to be common practice causes a large number of remandees to be held in prison thereby contributing to the overcrowding of prisons. It was widely reported by prisoners and legal counsel alike that a thorough review of the need to refuse bail is not undertaken at the Magistrate Court although the Magistrate Court is the court of first instance where the decision whether to deprive a person of liberty is made. For example, many prisoners stated that although they raised their hands as they wished to make a representation to the judge their request was not heeded.

Prisoners frequently complain they are not able to follow the legal proceedings since they could not hear the proceedings, or comprehend the language of proceedings or that the judge and lawyer did not make clear the nature of their charges to them. The number of prisoners serving prison sentences for not being able to afford small fines illustrates that incarceration adversely impacts the poor.

The prolonged length of time taken to conclude cases is a violation of the fundamental right to a fair trial, of which the right to trial without undue delay is a key component. When criminal proceedings are delayed due to the non-appearance of judges and counsel in hearings leading to the postponement of trials, it reduces public trust and confidence in the judicial process. A combination of the above-mentioned factors leads to overcrowding of prisons and associated consequences, and has a dire impact on the physical and mental health of prisoners. In addition to the financial costs to the taxpayer of sustaining the overburdened and overcrowded prison system, there are hidden costs to society that stem from the excessive imprisonment of vulnerable persons, such as loss of potential, breakdown of family relationships and stigma of imprisonment.

29. The Continuum of Violence

1. Introduction: rationalizing the use of violence

The data gathered through the prison study has revealed the continuum of violence that incarcerated persons experience. The continuum exposes the every-day nature of violence, which points to the systemic and structural nature of violence. While physical and psychological violence are viewed as human rights violations, structural violence is often ignored, most likely since the violence is ‘invisible’. Instead, it is ‘built into the structure, and shows up as unequal power and consequently unequal life chances’.¹⁰²⁴

Since the chapters in this report have discussed incidents of violence in detail, this chapter will draw together the threads and patterns discussed in the other chapters to illustrate factors that cause, fuel, normalize and thereby entrench violence within the criminal justice process and the penal system, i.e. from the point of arrest to incarceration. The purpose of this is to enable a better and more nuanced understanding of the nature of violence that will contribute to the formulation of better responses to counter violence.

The SMRs¹⁰²⁵ and the UN Convention Against Torture prohibit subjecting prisoners to torture, cruel, inhuman and degrading treatment and punishment. Freedom from torture is also guaranteed by Article 11 of the Constitution of Sri Lanka, and Section 4 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994, criminalises the use of torture, punishable with imprisonment between seven to ten years and a fine between Rs. 10,000 and Rs. 50,000. Furthermore, the Act clarifies that the fact such an act was committed on an order of a superior officer or a public authority shall not be a defence to such an offence.

As this chapter will illustrate, violence is used in prisons as a ritual of humiliation and degradation, to subjugate and control the person, i.e. it is used to construct ‘regimes of power and domination’¹⁰²⁶ in which the state officials have the upper hand and the individual is most often rendered powerless. The means and methods of violence used seemed geared to attack the person’s dignity and sense of self, and thereby make the person pliable and easily controlled. Violence when used in this manner becomes ‘casual yet endemic’, i.e. it becomes so normalized that it becomes entrenched and its use will not be questioned nor even elicit surprise either from within the system, the state or sometimes even the public. This is also because those arrested, detained and imprisoned are viewed by society as persons who are undesirable by virtue of the crime for which they have been detained or imprisoned. Violence

¹⁰²⁴ Bufacchi 198.

¹⁰²⁵ SMRs 2015, r 43 – 45.

¹⁰²⁶ Sim 191.

includes acts ranging from verbal abuse to physical violence that results in death, with both verbal and physical abuse adversely impacting a person's mental health.¹⁰²⁷

1.1. Dehumanizing discourses and the production of moral indifference

Globally and nationally there are many discourses that dehumanize certain groups of persons or communities, thereby legitimizing the violence used against them. For instance, the war against drugs in particular has and is being used in many countries, such as Philippines, both by the state and by the local media, to justify criminalizing large groups of people. These persons often tend to be from socially and economically marginalized communities and inhabit a certain physical space or lead a particular life due to their socio-economic condition, such as those who live in slums or those who are homeless and live on the streets. It is these persons who are targeted first by law enforcement authorities during such wars.

'Dehumanizing discourses' are used to justify the violence used against such persons who are deemed undesirable and unfit to be part of society. For instance, the person is stripped of his/her dignity and individual identity and made to appear as a being without rights, as less than human and as someone who is a danger to society at large. This then creates the belief the person doesn't have to be treated with the same humanity, dignity and respect as everyone else. Hence, through these discourses the violence used against persons so described/termed is legitimised. This leads to the 'social production of moral indifference... created by authorization, by routinization and by dehumanization of the victims by ideological definitions and indoctrinations.'¹⁰²⁸

The dehumanizing discourses thereby create a lack of empathy amongst society at large for detainees and prisoners, which ensures that public outcries are minimised when such persons are subjected to ill-treatment. The public response is often to think that the actions of the detainee/prisoner have led the officer to use violence. This illustrates deep-seated social bias against certain groups of persons that automatically leads to the belief that the person/groups did something that deserved such treatment. This also shows the social acceptance of the use of violence in custody. The final outcome of this dehumanizing process is that there will be little or no action taken to hold those responsible for the violence accountable.

In Sri Lanka, a study of the genealogy of violence and incarceration illustrates that both were shaped by the thirty-year armed conflict, two insurrections, repressive laws, such as the PTA and Emergency Regulations promulgated under states of emergencies, which normalized violence as well as the targeting of and subjecting certain groups of people to violence¹⁰²⁹.

¹⁰²⁷ For more information on death caused by violence in prison, please refer to chapter on Death in Prison.

¹⁰²⁸ Christie quoted in Scranton pg 2.

¹⁰²⁹ For a detailed discussion, please refer chapter Prisoners held under the Prevention of Terrorism Act.

The impact and legacy of the culture of violence and its normalization remain even ten years after the end of the armed conflict because its social and psychological ramifications have not yet been addressed.

2. Police violence

According to the narratives of prisoners, violence begins at the point of arrest, with many prisoners stating they experienced violence when they were arrested. The reasons for which persons were subjected to violence included, to obtain false confessions/ statements, to confess their involvement in the crime, admit committing an offence, provide the names of others involved in the crime and place their fingerprints when arrested on false charges.¹⁰³⁰

There is no particular pattern in the rank of police officers who were said to have perpetrated the violence- they included Senior Superintendents, OICs, Constables, Sergeant Officers, Inspectors, Sub Inspectors of Police and Police Constables, pointing to the normalization and acceptance within the law enforcement structure of the use of violence. Of the respondents, 42% of men and 20% of women said they had been subjected to ill-treatment by the police when they were arrested. In particular, women who were arrested on suspicion of possessing or selling drugs stated they were subjected to invasive and painful body cavity searches by female officers, which allegedly resulted in long-term injuries.

2.1. Tools of violence

The tools commonly used to inflict violence included cricket equipment, such as wicket stumps and bats, clubs, batons, pipes, hosepipe, broomsticks, sticks, poles and chili powder¹⁰³¹. Reportedly, hands and feet were also used to assault persons. Prisoners described it thus:

“They had some kind of a wood with them. It’s ‘Eramudu wood’. There was a stick this long. They beat me up using that on my back. They hit my back using their belts also.”.

Remandee, PCP

¹⁰³⁰ For a detailed discussion on reported misconduct of police during arrests, please refer chapter Arrest and Detention.

¹⁰³¹ Chili powder is allegedly used to inflict torture by rubbing it on a detainee’s body parts, including on their mouth and genitals.

"There were cricket bats, stumps and there were some other batons. Mainly it was cricket bats."

Condemned, BRP

"There is a small hose filled with sand. They started beating me with that and said, "Give it, give it, if not we will be filing 54 (section 54) cases against all your family members, we have badu (drugs) for that."

Remandee, BRP

"They used two cricket bats and two cricket stumps to beat us. One officer asked me to turn facing the wall and hit my buttocks like five times. My two friends were also beaten up."

Remandee, CRP

2.2. Methods of violence

Prisoners alleged that they were slapped (on the face and the ears), bent over and beaten on the back by hand, punched in the stomach with wicket stumps, kicked and hit with sticks. Persons also said they were assaulted on the legs, knees, buttocks as well as the soles of feet to prevent visible wounds and hence avoid detection. The majority of persons allege that they were handcuffed, or held in stress positions while being assaulted. One prisoner from ACP said:

"It was a small cell where we couldn't even move and my hands were cuffed. Even now there are bruises because of the handcuffs. They handcuffed this arm to the steel bars of that cell and I couldn't even move. Due to the detention order I was kept like that for three days. These handcuffs were removed only when I was going to the washroom and to wash myself. I was handcuffed to the bars of the cell for three days and they never took the handcuffs off. I was tied to it like an animal to show the people."

A prisoner from PCP said, "Inspector XX sir knocked me down onto the table, put my legs on the table, tied my legs to the table and then battered my legs", while a prisoner form BRP said:

"They cuffed me again and tied me down to a table like this and poured petrol over me and hit me with a wooden pole and told me to accept all the charges. If not, they said they won't let me go or that even if I go out, they won't let me be in peace, and they will plant a bomb on me."

In addition to physical violence, prisoners stated they were often threatened, with the threats ranging from arresting their families, or charging them with a serious and/or non-bailable offence.

2.3. Accessing remedies

The majority of interviewees did not lodge complaints with remedial bodies, such as the Human Rights Commission or the NPC, either because they didn't know of the existence of such institutions or were afraid of reprisals.

These persons, who were clearly unaware of the legal and judicial processes and had limited or no access to legal representation, said they were told if they complained to the Human Rights Commission or any other entity their remand period would be extended, or they would be given the death penalty or charged for a serious, non-bailable offence, such as drug offences or offences under the PTA, that would attract public denunciation. They said they believed the threats and hence did not lodge complaints.

Many persons informed the Commission that they did not pursue legal action because they felt it was pointless. This would prove to be true because, as discussed in the Entrance and Exit Procedure chapter, new entrants to the prison are asked upon admission if they were assaulted by the police and whether they wish to take action against the police. When an individual agrees to pursue action, the details they provide regarding the alleged assault are forwarded by the prison administration to the area police or Police Headquarters. However, no follow up action is taken by the prison thereafter, and the victim of the police assault would not receive a complaint number or reference to follow through with the matter as they did not lodge the complaint themselves. The prison administration also does not of their own volition produce a person alleging police assault before the JMO.

Remandees who alleged assault by the police stated they felt they were in a precarious position because the police investigation into their case was on-going, and by complaining against the same police officers, they felt the integrity of the investigation would be placed at risk.

There were also instances of those who had complained to the Commission stating they faced reprisals and were forced to withdraw their complaints - the Commission too came across instances of persons who sought to withdraw complaints reportedly due to threats or intimidation by the alleged perpetrators.

3. Role of judicial oversight in preventing custodial violations

Judicial oversight is an important means of preventing custodial violations, holding those responsible accountable and ensuring that the ill-treated person has access to medical care. In the continuum of violence, some prisoners stated that after their arrest when they were first produced before the magistrate even though there were visible signs of ill-treatment, such as bruises and cuts, or even when they informed the Magistrate of the violence they had experienced, the judicial officer did not order them to be produced before a JMO, order an inquiry into the alleged ill-treatment which would constitute an offence under the Convention Against Torture Act, or ensure the person had access to medical care to treat the injuries. It must be pointed out that Magistrates Courts function in a manner that provides little time for defendants to raise the issue, and often the defendant will be allowed very little time to present their case, during which time the Magistrate may not have the opportunity to examine the defendant for visible signs of injury and take action. The narratives of numerous prisoners demonstrated the need for robust judicial oversight of custodial violations:

Q: "And when you were produced before the Magistrate – did the judge realize that you had been assaulted?

A: Yeah, there were visible marks on my face.

Q: So, he knew?

A: I guess she knew but...

Q: She didn't ask?

A: I don't want to assume whether she knew or not but the thing is, on record, there is medical record of injuries."

Remandee, NMRP

Q: "How did you go to the court with your leg like that?

A: They still took me. I was limping, but they didn't even look. They don't look at these things. They just want to finish their case and to send the people

quickly. When there are loads of people, they won't check all that. They want to quickly finish the cases."

Remandee, GRP

Q: "Did they ask you whether you were beaten after they brought you here?

A: No, the acting Magistrate, in XXXX, XXXX asked me, what happened. I said I have an injury here on the right side because of the beating. I told him I have an injury on my head and also my left ear is deaf and I also have pain in the heart. He wrote down everything and said I'll remand you for fourteen days."

Remandee, GRP

A: "After producing me before the court, I told the judge, "Your honour, they hit me lot." I was asked not to speak at that time.

Q: Did the judge not allow you to talk?

A: The police told me not to speak, but I had to tell the courts that I was accused falsely. Otherwise, my children and my wife become helpless. I wanted to be released, so I said "Your honour, I want to speak". Then, I told that the police hit me lot. After that, the judge asked me to remove my shirt. I did that and showed all the assaulted marks which I had on my body. I said "Your honour, they beat me on others places also; they hit those areas using a stick. I cannot show you those. I cannot even walk. I was lifted and put into the vehicle and they had to hold me by my arms when I walked into court as I cannot even walk your honour." However, the judge did not listen to me and remanded me. What should I do, Miss? We are helpless."

Remandee, ACP

Q: "What happened when they took you to courts the first time?

A: Nothing happened, madam. I lifted my hands up and told the judge that I was beaten and that my hands and legs are broken. For that she told me to go and take medical treatment in the hospital."

Remandee, JRP

4. Prison violence

4.1. The inherent violence of incarceration

As illustrated in the Discipline and Punishment chapter and the Inmate-Officer Relationship chapter, violence is widespread within the prison system. Imprisonment as historically construed is a process that is inherently violent. The penal system is inherently violent because incarceration entails the stripping away of the personal identity, dignity and individuality of a person, which is replaced with a number, and in the case of convicted persons the provision of a uniform. It also includes the deprivation and denial of basic amenities and comforts that many take for granted. For instance, those elements which are defined as basic needs and rights in the ‘outside, free’ world, such as a place to sleep, bed, pillow, access to water whenever one wishes, toothbrush, toothpaste, soap, towel, access to health care when one needs it, access to education, the ability to practise one’s profession and have regular contact with family and friends, are ‘redefined as privileges to be earned through compliance and conformity’.¹⁰³² Things that are taken for granted in everyday life ‘assume new, institutionalised meanings as mechanisms of control functioning through the discretion of others’.¹⁰³³

The Mandela Rules, which stipulate the rights of prisoners, set out the above elements as rights to which every prisoner is entitled. Rule 3 for instance states that, ‘Imprisonment and other measures that result in cutting off persons from the outside world are afflictive by the very fact of taking from these persons the right of self-determination by depriving them of their liberty. Therefore, the prison system shall not, except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent in such a situation’. Rule 5 reiterates this and states that the ‘prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings’. In practice, prisoners are deprived of much of the above- mentioned through which their suffering is aggravated. These deprivations are discussed in detail in the chapters on Accommodation, Water, Sanitation & Personal Hygiene, Access to Medical Treatment, Contact with the Outside World, Women and Foreign Nationals.

The penal system in Sri Lanka continues to be based on an inherently violent ethos that is entrenched in the procedures and processes, which are underpinned by ‘regimes of isolation, suspicion and fear’.¹⁰³⁴ As illustrated in many chapters in the report, it is yet to move towards a more rehabilitative and restorative penal system. The prison system is therefore violent and closed, rarely subject to oversight and scrutiny, and appears structured to break the human spirit. Violence, which is used as a means to control, discipline and punish, is not

¹⁰³² Linda Moor 124.

¹⁰³³ 10 Scarton

¹⁰³⁴ Linda Moore chapter in Scranton p.124.

construed merely as the use of force, but also the structural violence of stripping away one's citizenship, identity and sense of self. A prisoner at NRP described it thus:

"It was hard because I was living with my family, suddenly everything changed when they put me into jail. I felt that I was dead and was numb for about two to three days. After that the people who are here in the ward helped me to come out of that situation and I started to do my routine."

Remandee, NRP

The fear created by the use of violence results in prisoners being servile in the presence of officers. For instance, prisoners are required to stand and lean against the wall when an officer enters the ward and always stand with their heads down and hands behind their back. The Commission noted that a number of officers instinctively seemed to be about to kick sleeping inmates awake but then realised the Commission was present and would instead call out to them. It appeared that men more than women were servile and submissive. Perhaps this is due to the existence of many means through which a male prisoner's spirit is broken upon entry to prison, likely because men are thought to be more difficult to control and prone to rebellion and violence.

The stripping away of their dignity and the belief they were lesser beings was on display when prisoners interacted with the Commission's team- for instance, prisoners were reluctant to come near the team and talk or sit at the same level. When prisoners came to speak with the team or be interviewed, even though a chair was placed next to the Commission officer, the prisoners would always expect to sit on the ground and were surprised when members of the Prison Study team invited them to sit in the chair next to them, or sat on the ground with the prisoners if there were no chairs available. These small gestures which are taken for granted in the outside world assume huge importance within the prison and illustrate the micro means through which a person's dignity can be stripped away to prepare them to be accepting of ill-treatment. Even though prisoners initially were uncomfortable sitting with the Commission team and expressed discomfort and fear they would be reprimanded by the officers, and the prison officers too were surprised, in time this became normal.

The death row phenomenon is another aspect of imprisonment which illustrates the inherent violence of incarceration and the criminal justice system. Prisoners on death row live in a state of purgatory, always expecting the most extreme kind of violence, i.e. the

deprivation of life itself, in addition to the other deprivations they suffer daily. The psychological impact of this structural violence, i.e. of the threat of execution, exacerbates the suffering they endure in dealing with the routine deprivations, which are also more than those suffered by other prisoners as discussed in the chapter on Prisoners on Death Row.

Following the announcement by the government in July 2018 that the death penalty would be implemented, prisoners on death row said they and their families were in a constant state of panic, fear and anxiety, a fact that was confirmed by prison officials at all prisons at which the condemned are housed. Prison officers stated that a number of condemned prisoners even fell ill soon after the announcement was made. When the Commission inquired whether the gallows at WCP could be inspected, the CGP at the time stated he did not wish to allow the Commission to access the gallows because the death row prisoners would immediately panic and even fall ill again as they might assume preparations were underway to resume executions. While the death penalty has been recognised in international human rights law as a cruel and unusual punishment, the additional element of fear and anxiety that was created by the announcement of the proposed resumption of executions, after a thirty year mortarium, is an extremely cruel form of structural violence that has had adverse physical and psychological impact on death row prisoners.

4.2. The normalization of violence in prison

When living within a controlled system that has normalized different forms and levels of violence encountered daily in different ways, the individual adapts and comes to accept and even expect it. When prisoners were asked if there was violence in prison, they would answer in the negative but when asked specific questions whether anyone was slapped, kicked, or hit, they would reply in the affirmative and state it was an everyday occurrence. For instance, in the study, 17% of the male and 6% of the female respondents stated that they have suffered physical ill treatment at the hands of a prison officer, in the prison at which they were located at the time the questionnaires were administered. Of those who stated they have been physically ill-treated, the following is the frequency of ill treatment suffered during thirty days immediately prior to the administering of the questionnaire.

	Men	Women
Less than 5 times	56%	29%
More than 5 times	11%	14%

For more quantitative data on violence in prison, please refer the chapter on Discipline and Punishment.

In the continuum of violence, verbal abuse, which is routine in all prisons and is viewed as normal, should not be ignored because it is the first point of violence that paves the way for the normalization of physical violence. Verbal abuse plays a considerable role in breaking the spirit of the prisoner through humiliation and making them submissive and accepting of physical violence. Even senior prison officials acknowledged that the use of obscene and abusive language is a problem that has to be addressed. Prisoners described it thus:

"I then told the CJ to issue a letter so that I could make a call. He said to submit it and see. It has been a month since I have submitted that letter. I have not yet received a response. The next time I went to say I didn't get a response he said some obscene words, saying that he would beat if I asked again and then he asked me to get out."

Convicted male, MCP

A: "In our religion (Islam), we have to pray five times a day no? They said to you that they let us pray five times no? Those were lies. After the fasting month they close this (mosque) and don't open it again.

Q: Ahh. The mosque is not open?

A: No, doesn't open on other days.

Q: There is no way for you to go and pray at the mosque?

A: No, they don't let us.

Q: Ahh. If you ask them saying that you need to pray?

A: They scold us no miss. Any person is scared when they are scolded and beaten no? I can't get beaten no? I'm thirty-six years old, why should I get beaten by a person here, when even my father has never lifted his hand at me."

Convicted male, BRP

A prisoner describing what happens if they ask for soap from the officers said:

A: "I don't get visits here, they'll send us (to a prison close to our homes) once in six or seven months but that is done according to their wish or else they don't send and if we ask for soap and things they'll hit and chase us away....

Q: So, don't they give anything?

A: They scold saying "go you f***** why do you need a soap you came here by stealing..." So, they say like that and scold..."

Convicted male, POPC

Q: "So far have you complained about anyone?

A: I have tried complaining and I have only been beaten. Despite this if I speak to the senior officer when he comes for his rounds, he just scolds me in filth and tells me to go away."

Convicted male BATRP

Prisoners from minority communities have stated that they have suffered verbal abuse due to their ethnicity or religion¹⁰³⁵.

Q: "Did you ever complain?

A: Yeah once against the prison police. Once I came back from courts and they asked me what is your case and I told PTA and asked me my home town I told it was Matale- then they scolded me in filth."

Convicted male, PCP

¹⁰³⁵ For a detailed discussion, please refer chapter Inmate-Office Relationship.

“An officer scolded in filth continuously saying “*thambya*”. In that situation, I didn’t like what he was saying because I’m loyal to my religion. I don’t pray five times a day and I only go to the mosque on Friday. My wife is Tamil.”

Convicted male, BRP

Scores of prisoners interviewed seemed to think that violence is acceptable and was being used only because the prisoner had “done something wrong”.¹⁰³⁶ The ‘wrong’ was understood very broadly, ranging from possessing contraband such as tobacco, cigarettes or drugs to being a bit late for polling, or not immediately carrying out the instructions of officers, as illustrated by the following narratives of prisoners:

“They only beat if you do anything wrong, they have never beaten us. Only the people who do drugs get beaten. We did not get beaten after the CID”.

Convicted, PCP

A: “Yes they beat when you do something wrong.

Q: What do you mean by “doing something wrong”?

A: That means when you deviate even a bit from the line during polling, they at least clout you on the head.”

Remandee, ACP

“If someone is late then that person is beaten. In my case, during my early days here, I was beaten up. I felt so tired those days, so one day I could not wake up early. When they called us to polling, I came while buttoning my shirt. So, I was late to get down to the queue and I was the last one there. Then, officers called me to a side and hit me while asking ‘why you are late? It is a normal thing and we should not care about it (smiles)’.”

Remandee, ACP

¹⁰³⁶ For a detailed discussion on the reported reasons for the perpetration of violence, please refer chapter Discipline and Punishment.

"They hit when we tease anyone. There are old people in the PH, they (YO ward inmates) tease them, and then those old people go and complain. Then the officers hit the YO inmates. They advise them not to do it again if it's the first time. If it's the second time, they hit."

Remandee, KGRP

"Hmmm they beat according to the nature of the wrongful act. Sometimes they beat harder for escaping. It might result in breaking a leg. Things like that have happened. That is the biggest wrong you can commit. They hit two or three times for other things. They will be beaten if they are found with prohibited things. Tobacco, beedi and cigarettes. We can have betel but without tobacco."

Convicted, KRP

A: "I have seen people getting beaten when they did wrong.

Q: Do they hit a lot?

A: No, they just hit once or twice with the stick."

Convicted, ARP

"If prisoners make mistakes, they will hit. They won't hit forcefully, they only hit like twice. If they ask prisoners to stay in polling or wash soapy hands in the water, so there are such mistakes, and at that time officers don't have a choice, they have to warn the prisoners."

Remandee, BRP

"No, they don't hit us for no reason. They just hit the rebellious ones. They don't beat them to death but just hit them to get them in line...they only hit when someone doesn't listen to them or if they cause any problems."

Condemned female, PCP

A: "No, the prison officers who come and go, if they see any wrongdoing, I have seen instances where they call them and beat them.

Q: What sort of wrongdoing are they beaten for?

A: Sometimes there are fistfights, usually they are beaten when there is any fistfight or conflict. I have been beaten because I went to ask for hot water. It was my fault, asking for water.

Q: How were you beaten? By whom?

A: I went to the kitchen and I got some hot water when I couldn't bear it any more.

Q: How did you get it? Did you ask someone?

A: I asked but no one wanted to give me, so I went and took it. When I took it and came out, an officer came. He threw the hot water away. Then he struck me on the face. That was it. That was an ordinary thing but I told myself as it was my fault."

Remandee, KGRP

Hence, within this eco-system in which violence is normalized, an act of violence will have to be particularly brutal or violent in order to be considered serious. The kind of violence described above, and even strip and cavity searches, which might constitute sexual assault in other instances¹⁰³⁷, would be considered normal and justified, as is illustrated by the above narratives of prisoners.¹⁰³⁸

The normalization of acts of violence, which are considered minor and hence acceptable to maintain order, creates an environment in which the escalation of violence would take place gradually, and hence in time even the most brutal acts would become normalized. For instance, an incident of death of an inmate who was allegedly killed due to the brutal assault by another prisoner did not arouse concern amongst prison officials or even amongst most prisoners who viewed it as a normal part of prison life.¹⁰³⁹

The normalization of violence also means that prisoners find that the only way to survive prison is to be submissive. In this regard, the convicted prisoners, since they are certain they have to spend a period of time within prison, are careful not to engage in any behaviour that might anger the officers. Remandees, as they think they might be released any time, are often the ones who challenge the authority of the officers in the event of any violation or injustice and are more willing to make complaints to bodies such as the Commission. Those at open

¹⁰³⁷ Angela Davis 2005:47

¹⁰³⁸ For a detailed discussion on invasive body searches conducted in prison, please refer chapter Entrance and Exit Procedure.

¹⁰³⁹ For a detailed discussion, please see chapter Death in Prison.

prison camps and work camps are most resistant to opening up about violence since they do not wish to do anything that might jeopardise their upcoming release, because they fear any complaint would result in reprisals from officers. As a convicted prisoner at AOPC said:

"Even when you came yesterday why was I reluctant? Because I have to be here for another three or four years. Then I would completely lose my freedom. They won't look me in the face. They will scold me in filth saying son of a XXX get lost and will hit us. Therefore, we cannot say anything. They call us by a different name when we wear this jumper. We get into that level and that's how we serve the sentence. I only have two or three years. I will find a way to spend it somehow."

4.3. Violence as the primary means of maintaining order

As discussed in the chapter on the Challenges faced by the Prison Administration, the DOP is severely short staffed and hence officers work extremely long hours, sometimes three days at a stretch, under difficult conditions and are therefore subject to stress and burnout. Officers are also not provided the required training on the correctional purpose of incarceration and hence view and resort to the use of force as the main means through which to maintain control and order. In particular, these officers often have no means other than force to deal with persons suffering addiction withdrawal symptoms or severe psychiatric disorders due to which they engage in disruptive behaviour.

Within this context in which officers are overburdened and often times ill-equipped to deal with a complex population, officers consider it imperative to be viewed with respect and even fear by the inmates. Hence, an act which is viewed as trivial in the outside world might assume magnified proportions not only because of the need, in the eyes of the officer, to maintain respect amongst prisoners and exert control to maintain order¹⁰⁴⁰, but also because the officers are overworked and under severe stress and easily provoked.

The Commission has come across incidents of deaths through violence¹⁰⁴¹, one through alleged prison officer violence and two through prisoner violence, where violence was allegedly used to restrain drug and alcohol dependent prisoners who engaged in disruptive behaviour when experiencing withdrawal symptoms. Prisoners themselves empathized with prison officers who they believe have no other option but to resort to the use of force to restrain drug and alcohol dependents engaging in disruptive behaviour. In the instance of an incident of violence allegedly perpetrated by an officer against drug dependent persons in prison for selling drugs, both officers as well as many prisoners defended the officer who was described as an 'outstanding and incorruptible officer' and a good man, because they felt

¹⁰⁴⁰ Michalski 51.

¹⁰⁴¹ For a detailed discussion, please see chapter Death in Prison.

he had no other option in that instance to control the prisoners. The following narratives illustrate it thus:

“Beating up happens almost every day. There are lots of people who are crazy on drugs. The officers have no other way except to beat them.”

Remandee, NRP

“I hear, not just in this prison, it’s in a number of prisons. Those officers are tired from morning. They are tired. Just like us.”

Remandee, CRP

“They don’t beat us unnecessarily. These small officers are not beating us unnecessarily. If we did something wrong, they will beat us. That is fair enough. They have to give punishments for wrong doings otherwise they can’t control prisoners.”

Convicted, HWC

“Beat, as in if someone does some wrongful act or something of the sort then, and if it is problematic to the administration they beat, because then it will be very difficult to control right?”

Convicted, WCP

Prisoners differentiated between officers, such as the one described above as outstanding and defended even by prisoners, and whose use of violence was justified by prisoners, and officers who reportedly view the use violence as normal and use it in a casual manner every day. Such a distinction by the prisoners themselves indicates the extent to which the acceptance of violence is entrenched in their psyche, whereby they have created gradations of acceptable and unacceptable levels, forms and reasons for the use of violence. This is the final stage in the continuum of violence, which begins with the use of unlawful force by police during arrest and culminates in prison, where prisoners begin to consider certain forms of violence as acceptable and certain prisoners deserving of the violence perpetrated by prison officers. It also highlights the absence of non-violent means to deal with problems that arise in penal institutions.

Violence to maintain order and control is used not only by prison officers but also prisoners who are appointed kamara party or ward leader. As discussed in other chapters in this report, kamara parties are given special privileges and have a close relationship with prison officers as they provide information to officers about what happens in the wards. Through this, kamara parties gain a high status and hence have considerable power to decide inmates’ access to sleeping space, use of water and even prisoners’ access to prison officers to lodge complaints. In many wards kamara parties conduct rituals of humiliation for new entrants to the ward as a means of asserting their authority. The same was said of prisoners who are SDs or are in work parties that are coveted and give them special status, such as those

working at the Location Branch, which has been identified by many prisoners as a division which uses violence against prisoners.

Kamara parties are given a wide berth to discipline prisoners in their wards as they see fit and the Commission has not come across any instances where kamara parties have been disciplined in any way for using violence against other inmates. As a convicted prisoner at KGRP stated, “the kamara party informs the rules to new inmates. New inmates are put into a small room and beaten up. Then those new inmates become so helpless”. Sometimes both kamara parties and prison officers allegedly participate in the act of violence. As a convicted prisoner from KRP narrated:

“In March 2018, when I had just arrived here – after only like three days, when the XX ward was asked to line-up while I was in the lavatory, a convicted prisoner called A hit my head once with his hand for being late. Then two officers kicked me. [They] beat the knees until they bled. Then we were lined up and I was made to kneel down. Then the ward leader called XX hit me in the ear saying “learn these things when you come to prisons”. Then I fainted and collapsed.”

It was commonly stated that prison officers punish prisoners using violence based solely on the information provided by kamara parties, without inquiring into the allegation or seeking evidence as illustrated by the narrative of a convicted prisoner at a remand prison:

“On the day of Sinhala and Tamil New Year, seven of us in the XX ward asked the ward leader whether we could sing. He said that he needed to watch TV and so could not allow singing. Then out of fear that we might hit him, he shouted and told the officer outside that we are getting ready to take drugs inside, and seven of us were called near the Welfare Division and we were assaulted without inquiring into anything. First, the person who requested to sing was hit on the ear until he collapsed. We were also beaten five – six times with a broomstick and were ordered to kneel on the ground under the sun. We were put into other wards from the wards we used to be in for months. I request you to inquire into these assaults. So many incidents like this happen. After listening to the “ward leader,” the officer ordered other officers to assault us.”

Since using violence is viewed as the primary means of maintaining order, the Commission has often been told by prison officers, such as at WCP and GRP, that they will have difficulties maintaining order in prison because the officers are now afraid to “do their duty” for fear of being summoned to the Commission for an inquiry into torture. This illustrates their belief that violence is the primary means at their disposal by which they can effectively perform their functions and maintain order. Moreover, it demonstrates not only the lack of awareness of non-violent strategies to maintain order but also points to the normalization and entrenched nature of violence within the prison system.

4.4. Patterns of violence

Some techniques of violence and humiliation and degradation are institutionalised, such as prisoners always being instructed to kneel either as form of punishment itself, or as a precursor to the punishment, i.e. where a prisoner is told to remain kneeling for a period of time or move from point A to B while kneeling as punishment, or is asked to kneel prior to being assaulted. As was mentioned in the Entrance and Exit Procedure and the Discipline and Punishment chapters, certain persons, such as those remanded or convicted for drug or sexual violence offences, are assaulted upon entry. In PCP, women who are recidivists are subjected to a technique similar to water boarding whereby their heads were dunked in water. These forms of initiation violence are referred to as the “welcome slap”.

As has been discussed in the Discipline and Punishment and the Inmate-Officer Relationship chapters, when violence is used to punish prisoners, it is most often done so in a public place, or in a way other prisoners are able to see what is taking place, in order to serve as a deterrent to others. To date, there is no evidence that such public displays of the use of violence as punishment has a deterrent effect on prisoners, since the committing of offences, such as the smuggling of contraband has not abated. This points to the need to examine the root causes of these offences, identify the key players who facilitate or encourage these acts and deal with it in an evidence-based manner that is subject to the rule of law. Such a response has to be long-term and requires the expending of considerable financial resources.

A point to be made about contraband is that even though prisoners are allowed access to tobacco according to the Prisons Ordinance, in practice tobacco is viewed as contraband in all prisons except JRP and prisoners are punished for possessing even a small piece of tobacco. It should be noted that prisoners are being subjected to violence for possessing a provision/good that is allowed by law governing the administration of prisons.

The other pattern observed is that prisoners stated they were beaten for self-harming, particularly YOs at the Wataraka Training School, as was discussed in the chapter on Young Offenders. A YO from Wataraka illustrates this as follows:

“They beat me, told me to kneel down, put chili powder to the places we cut. I cut myself because no one from home comes to see me. I found a blade from a sharpener and cut myself with it. After that they punished me and put chili powder.”

Similar sentiments also echoed from an inmate in KRP, who stated:

A: “I was in the B cell for several days. In there also I tried to hang myself.

Q: Was it inside the B cell?

A: Yes, I cannot control it when I get that urge madam. I become restless. Then I start to walk here and there and talk with others.

Q: Didn't anyone see what happened?

A: XX aiyya saw it. He was the one who saved me. He didn't tell the officers because they would beat me."

It was also commonly stated that officers of the Location Branch and SM Brach are the ones who usually use violence towards prisoners, which was confirmed by the number of complaints the Commission received from prisoners from different prisoners, in which the alleged perpetrators were officers of the Location Branch or SM Branch. As a prisoner at KRP describing the officers who engage in violence said:

"Like I said, if you go to the Location Branch, they are number one. That's it. Because they are the ones who are given blanket authority to walk into any ward at any time during the day. Whereas the other officers are not given that privilege, they are only in one section."

5. General observations

The data gathered during the course of the study illustrates that violence is an entrenched characteristic of the criminal justice process from the point of arrest through the process of incarceration until release. The reason the use of violence on suspected offenders and prisoners often does not result in a public outcry is because offenders, by virtue of their criminal conduct, are believed to be deserving of such conduct.

Many prisoners informed the Commission that they faced violence during arrest in the form of physical coercion to confess to a crime, were forced to place their fingerprints on evidence and provide names of others involved. They said they were faced with the threat of reprisals, which prevented them from lodging a complaint with the Commission or the NPC. Persons who are assaulted by police and then remanded in prison have little means of accessing remedies or pursuing justice, particularly as there is minimal judicial oversight of custodial violations.

The use of force by prison officers on prisoners is ubiquitous, in that violence is used as an automatic sanction for misdeeds committed in prison, without any fear of consequences,

despite the fact that the use of torture as a punishment is prohibited by the Constitution and carries a sentence of imprisonment for perpetrators under national law. The use of violence as a punishment for misdemeanours has become normalised, such that prisoners insisted to the Commission that ‘they are not beaten without a reason’. This illustrates that at present, maintaining order and discipline in prison is also inextricably linked to the use of violence, or at the very least the use of force, even in non-violent circumstances, i.e. where the inmates do not engage in any violence towards officers or each other.

During the study, the Commission repeatedly heard from many prisoners across prisons that during the period the Commission visited there was no violence, and sometimes for even a month or two afterwards. Many prisoners requested the Commission to establish an office within the prison, which they felt would ensure violence was not used against prisoners. This reiterates the importance of robust, independent monitoring, i.e. protection through presence, and demonstrates its potential to have lasting impact on disrupting and dismantling the cycles of violence.

To reduce or prevent violence altogether in prisons would require a review of and change in the philosophical and ideological basis of the penal system which shapes the procedures and processes through which prisons are maintained. More importantly, there must be recognition that incarceration is not meant to be retributive but rehabilitative. Such a fundamental change in the philosophical basis leading to the overhaul of the entire penal system requires political will as well as the allocation of considerable resources, both human and financial.

30. Non-custodial Measures

"A lady I met once had been produced in court for selling two bottles of illicit alcohol. We sat in her house and discussed the matter with her. Her son was there. He had an operation and since then, he is paralyzed. Now he is on a mattress on the floor. Every time he wants to change the position, he calls her. If he wants to drink some water, he has to call her. She can't go out of the house. Her husband has gone, left her. She said, "How can I do any work? How can I go? So, I sold two bottles of alcohol to buy his medicine." Now, suppose that mother could not pay the fine. If she was sent to prison for six months or three months or even one month, what will happen to that child? If she cannot pay the fine, she goes to prison. Even if she pays the fine and comes back home, what will she do then?"

Assistant Commissioner
Department of Community Based Corrections

1. Introduction

This chapter discusses provisions outlined in national law that can be utilized at the sentencing stage of a criminal trial, whereby offenders can be given a non-custodial sentence instead of being sentenced to a term of imprisonment. The objective of non-custodial measures is to limit the use of deprivation of liberty in criminal justice to the most serious offences, and focus on the rehabilitation of offenders outside prisons. Sentencing dispositions or alternatives to imprisonment will be discussed in this chapter, while post-sentencing dispositions such as evaluations, commutation committees, special pardons and general pardons are discussed in the chapter Early Release Measures.

When imprisonment is the primary outcome of the criminal justice process it causes a range of problems, especially prison overcrowding, and the associated adverse impact on detention conditions. This results in the rehabilitative purpose of incarceration being lost because the prisons and existing programmes are ill equipped to handle large numbers of prisoners. The stigma of serving a prison sentence as well as the social cost of offenders serving prison sentences for minor offences also need to be taken into account when assessing the usefulness of incarceration. The use of non-custodial measures therefore, changes the focus of penitentiary measures from punishment and isolation, to restoration and rehabilitation since offenders continue to remain in the community rather than be removed from society. Additionally, non-custodial measures would help resolve fundamental issues with which the prison system is grappling, such as overcrowding as well as the financial burden on the taxpayer of sustaining the prisoner population. However, while implementing alternate measures to incarceration, it is important that the conditions

attached to it are not such that they set people up to fail, thereby leading to the revocation of the alternate measure and resulting in incarceration.¹⁰⁴²

2. Legal framework

2.1. International standards

The international standards for non-custodial measures are set out in the Tokyo Rules. As clarified in the official commentary of the Tokyo Rules, non-custodial measures refer to the decision by a competent authority, at any stage of the administration of criminal justice, which requires a person suspected of, accused of or sentenced for an offence, to submit to certain conditions or obligations that do not include imprisonment. The term primarily refers to sanctions imposed on an offender, which require them to remain in the community and to comply with certain conditions, instead of being held in a detention facility or prison.

The Tokyo Rules set out the different measures that can be used in lieu of imprisonment. The purpose of non-custodial measures in general, and the Tokyo Rules in particular, is to find effective alternatives to imprisonment and to enable the authorities to adjust penal sanctions to the needs of the individual offender in a manner proportionate to the offence committed. The Rules state that proportional sentencing should be the cornerstone of an effective and fair criminal justice system and incarceration should be used as the last resort and applied proportionately.¹⁰⁴³ These rules provide a range of options that a country can explore, from pre-trial to post-sentencing dispositions.¹⁰⁴⁴ These rules also highlight the advantages of considering such measures, since they enable the offender to remain at liberty, while enabling him/her to continue his/her work, family life and studies. The official commentary on the Tokyo Rules states that non-custodial measures 'have the unique characteristic of

¹⁰⁴² Alexi Jones, *Correctional Control: Incarceration and Supervision by State* (Prison Policy Initiative, December 2018) < www.prisonpolicy.org/reports/correctionalcontrol2018.html>

¹⁰⁴³ UN General Assembly, *United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)*, 14 December 1990, Resolution 45/110

¹⁰⁴⁴ The Tokyo Rules 1990, rr 8 and 9; "8. Sentencing dispositions,

8.1 The judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate.

8.2 Sentencing authorities may dispose of cases in the following ways:

(a) Verbal sanctions, such as admonition, reprimand and warning; (b) Conditional discharge; (c) Status penalties; (d) Economic sanctions and monetary penalties, such as fines and day-fines; (e) Confiscation or an expropriation order; (f) Restitution to the victim or a compensation order; (g) Suspended or deferred sentence; (h) Probation and judicial supervision; (i) A community service order; (j) Referral to an attendance centre; (k) House arrest; (l) Any other mode of non-institutional treatment; (m) Some combination of the measures listed above.";

"9. Post-sentencing dispositions

9.1 The competent authority shall have at its disposal a wide range of post-sentencing alternatives in order to avoid institutionalization and to assist offenders in their early reintegration into society.

9.2 Post-sentencing dispositions may include:

(a) Furlough and half-way houses; (b) Work or education release; (c) Various forms of parole; (d) Remission; (e) Pardon."

making it possible to exercise control over an offender's behaviour while allowing it to evolve under natural circumstances', thus allowing the offender's sense of responsibility to develop. They further state that non-custodial measures relieve the financial burden of incarceration on the state.

The Tokyo Rules contain both sentencing dispositions as well as measures for the early release of prisoners which become applicable following a conviction, to encourage the reduction of the use of imprisonment.

2.2. Sri Lankan legal framework

The Tokyo Rules serve as a basic standard, which individual countries can use to design their own non-custodial measures. In accordance with TR 3.1, which states that all non-custodial measures must be prescribed by law, the Sri Lankan legislative framework has the Community Based Corrections Act (No. 46 of 1999) (hereinafter referred to as CBC Act) and the Probation of Offenders Ordinance (No. 42 of 1944) (hereinafter referred as POO), which provide for non-custodial measures. These laws will be discussed in detail in the following sections.

3. Community Based Corrections (CBC)

Section 18 of CPC of 1979 sets out the legal provision for Community Service Orders in lieu of imprisonment or in lieu of imprisonment for default of payment of a fine. CPC requires the Community Service Order to direct "[an] accused person to perform stipulated service at a named place in a State or State-sponsored project, if regulations have been made by the Minister for carrying out such an order." However, the specific regulations for the implementation of such orders did not exist prior to 1999. Thus, in order to find alternatives to incarceration, and to reduce overcrowding in prisons, a team of six led by Justice A. R. B. Amarasinghe visited Western Australia in 1999 to study community-based corrections. As a result, community-based correction was introduced in Sri Lanka first as a pilot project in three Magistrate Courts, namely Hulftsdorp, Fort and Maligakanda, in 2000. In 2008, the Department of CBC was established under the then Ministry of Rehabilitation and Prison Reforms.

As of 2019, the Department of CBC is within the purview of MOJ. According to the Department of CBC 2017 Performance Report¹⁰⁴⁵, currently CBC is implemented in 125 Magistrate and Circuit Courts island-wide¹⁰⁴⁶. In 2017, the JSC, at the request of the Department of CBC, issued a circular to all Magistrate Courts, instructing judges to ensure the implementation of the CBC Act.¹⁰⁴⁷ As pointed out, the underlying idea of CBC is "about

¹⁰⁴⁵ Department of Community Based Corrections, *Performance Report*, 2017, p 8.

¹⁰⁴⁶ ibid

¹⁰⁴⁷ Judicial Service Commission, Circular JSC/SEC/CIR/2017

giving people [offenders] a second chance and understanding crime and recognizing it as a failure of our society, instead of blaming one person [offender] for it all.”

2.1. Eligibility to be ordered community-based corrections

TR 3.2 states that the selection of a non-custodial measure shall be based on an assessment of established criteria in respect of both the nature and gravity of the offence, the personality and background of the offender, the purpose of sentencing and the rights of victims.

In line with the Tokyo Rules, the CBC Act makes provisions for when CBC can be employed and the process to be followed to make the decision to use CBC is in Section 5(1). Section 5(1) provides the threshold for the imposition of CBC and states that if imprisonment is not mandatory or the penalty does not include a term of imprisonment exceeding two years, a correctional order may be issued by a judge in lieu of imprisonment, suspended imprisonment or fine. The CBC Act contains assessment guidelines for the preparation of a Pre-Sentencing Report by a CBC officer to enable a decision to be made whether CBC should be granted. These reports would provide information on the social history and background of the offender and his/her dependents, medical and psychiatric history of the offender and other offences for which the offender had been found guilty/had been charged with or indicted. CBC officers are based in courts, as the officer is required to submit Pre-Sentencing Reports, report any violations of the CBC order to the court and take action regarding such violations, discussed in detail below.

Pre-sentence report

According to Section 6 of CBC Act, the court may ask the Commissioner of CBC to provide a pre-sentence report¹⁰⁴⁸ detailing the complete history of the offender¹⁰⁴⁹. This satisfies the minimum criteria laid down in TR 7.1, which states that where possible the judiciary may call for a social inquiry report. The Assistant Commissioner stated that this report constitutes an important part of the process of CBC, since it helps evaluate the offender and provide means of correction that is best suited to him/her. For example, he described a

¹⁰⁴⁸ Community Based Corrections Act No. 46 of 1999, s 6 (1)

¹⁰⁴⁹ ibid s 6 (6), “Subject to any special directions given by the court, a pre- sentence report furnished to court by the Commissioner in compliance with a requirement imposed on him under subsection (1) shall set out all such matters as appear to the Commissioner to be relevant to the sentencing of the offender and as are readily ascertaining by him, including the following:-

(a) the age of the offender; the social history and background of the offender (including the names and ages of the persons who are dependent on the offender); (c) the medical and psychiatric history of the offender; (d) the educational background of the offender; (e) the employment history of the offender; (f) any other offences of which the offender has been found guilty or for which he or she is charged or indicted; (g) the extent to which the offender has complied with any earlier sentence or is complying with any sentence currently in force in respect of him or her; (h) the financial circumstances of the offender; (i) any special needs of the offender (j) the employment history of the offender’s spouse and the income earned by him or her; (k) the courses, the programmes, treatment or other assistance that could be made available to the offender and from which he or she may benefit; (l) the facilities available for the performance of unpaid community work.”

success story of an offender who was consuming alcohol every day, and was once convicted for the use of illicit alcohol, who was given a CBC order. During the evaluation of the offender for the pre-sentence report, it was observed that he could make ekel brooms. Therefore, the CBC officers presented his pre-sentence report to the court to highlight this particular skill, as a result of which his correctional order by the judge stated that he should engage in the making of ekel brooms as a condition. The CBC officer also assisted the said person by negotiating with local supermarkets in his area to sell his brooms. On a follow-up visit by a CBC officer, it was found that the offender's home environment had improved and he was able to better support his family.

2.2. Correctional orders

Section 9 of the CBC Act prescribes the format in which the correctional order is to be issued. Section 9 (2) specifically states that the court may include additional conditions in an offender's correctional order if it is found that s/he requires treatment or rehabilitation, such as those charged for drug offences. As per the Commentary on the Tokyo Rules, correctional orders must be realistic, precise and achievable.¹⁰⁵⁰

The following table from the Department of CBC's Performance Report 2017 outlines the different correctional measures used by the Department of CBC for the year 2016-2017.

Programme	Quantity
Counselling Programmes	2252
Development & <i>Shramadana</i> Programmes	850
Spiritual Programmes	176
Vocational Training Programmes	156
Refer to Drug Treatment	2280
Special Day Programmes	55

Source: Performance Report 2017 (Department of Community Based Corrections)¹⁰⁵¹

While counselling, personal development & *shramadana* and spiritual and special programmes are organized by the Department of CBC, targeted correctional measures, such as vocational training and drug rehabilitation, are provided with the help of other state institutions. The different correctional measures adopted by the Department of CBC are in line with TR 13.1, which states that 'within the framework of a given non-custodial measure, in appropriate cases, various schemes, such as case work, group therapy, residential programmes and the specialized treatment of various categories of offenders, should be developed to meet the needs of offenders more effectively.'

TR 10.4 states that offenders should, when needed, be provided with psychological, social and material assistance with opportunities to strengthen links with the community that

¹⁰⁵⁰ United Nations, *Commentary on the Standard Minimum Rules for Non-Custodial Measures*, 1993, p 24.

¹⁰⁵¹ Department of Community Based Corrections, *Performance Report*, 2017, p 24.

facilitate their reintegration into society. This international standard is reflected in the Department of CBC's initiatives to provide offenders who are from low-income backgrounds opportunities to develop a particular skill they might use to sustain themselves economically and thereby strengthen their ability to earn a livelihood. When offenders complete the duration of their respective correctional order, they are either provided with money or provisions by the Department of CBC to start a business. This is financed by the Ministry of Rehabilitation. There is no pre-set amount of money as the amount is decided on a case-by-case basis depending on what suits the offender best.

Although the Commission does not have information on the effectiveness of each of these programmes, as per the statistics in the Performance Report 2017 of the Department of CBC, a total of 14,324 offenders were successfully rehabilitated in 2017, which illustrates that CBC as an alternative measure should be increasingly utilized. It should be noted that the Task Force Report¹⁰⁵² encouraged the use of CBC as an alternative to imprisonment. The report specifically stated, "This legislation offers an effective alteration to incarceration, which sanctions Magistrates to impose CBC in place of imprisonment under certain circumstances. The offenders are engaged in effective projects, which provide persons with vocational training and an opportunity to re-integrate into society, which reduces recidivism".

2.3. Monitoring of offenders

Even though the CBC Act does not provide for the regular monitoring of offenders, the Correctional Officers recruited by the Department of CBC, tasked with undertaking monthly visits to persons who have been ordered CBC to check their progress. Following each visit, they prepare a report, which is then forwarded every month to the senior Correctional Officer of the area where the offender lives, who then forwards it to the Commissioner of the Department of CBC. The monitoring of persons on CBC, however, is not undertaken as regularly or effectively as required due to the severe shortage of staff.

2.4. Breach of Correctional Orders

TR 14 states that when there is a breach of a condition of a non-custodial measure, it should not immediately result in the imposition of a custodial measure, but instead the competent authority shall attempt to impose another suitable non-custodial measure. A sentence of imprisonment should only be imposed in the absence of other suitable alternatives. Section 14 of the CBC Act is not in line with the Tokyo Rules, since it does not provide the offender with an alternative non-custodial measure; instead the offender is made to pay a fine and is imprisoned for the breach of the non-custodial measure. However, it was stated by the Assistant Commissioner that in practice, when an offender fails to comply with the conditions of the Correctional Order s/he is given another chance by CBC prior to informing the court of the breach.

¹⁰⁵² First Report of the Taskforce on Judicial and Legal Causes for Prison Overcrowding and Prison Reform' issued on 09 November 2016.

3. Challenges to the effective utilization of community-based corrections

3.1. Under-utilization of community-based corrections – the failure to fully implement the Community Based Corrections Act

Although the CBC Act provides a sound alternative to imprisonment, it seems to be rarely used. The DOP statistics illustrate that 92% of convicted prisoners were sent to prison for sentences of less than two years, while 64.8% of convicted prisoners were in prison for the non-payment of fines¹⁰⁵³, which highlights that existing non-custodial options are not widely utilized. This was reiterated by the Assistant Commissioner of the Department of CBC, who stated that, “The current judicial system is very pro incarceration and doesn’t see the merit of Community Corrections.”

The Assistant Commissioner stated that due to what appears to be the inherent bias of the different actors in the criminal justice process, including lawyers and police officers, against non-custodial measures, offenders are not given CBC. The Assistant Commissioner stated that lawyers do not ask for CBC for fear of losing their clientele due to the judicial process coming to an end following the imposition of a CBC order, while it was deemed that CBC is also avoided by the judicial system as the process of calling for pre-sentence reports and issuing a correctional order prolongs the trial proceedings, compared to the convenient option of incarceration. Further, the lack of understanding about the purpose of a pre-sentence report, as provided under Section 6(1)¹⁰⁵⁴ of the CBC Act, was said to be one of the reasons CBC is not ordered by the Assistant Commissioner.

Since the offender is not aware of CBC, s/he does not understand that CBC is an option, hence when the judge inquires if s/he opts to pay the fine or be sentenced to CBC, the offender opts for the former. The Assistant Commissioner stressed that if the Magistrate could direct a person to the CBC officer based in the court, the officer can educate the person on CBC, which would then result in the convicted person opting for CBC instead of paying a fine or even incarceration.

Statistics shared with the Commission by the Assistant Commissioner indicate that each Magistrate Court has issued CBC orders. While numerically some courts have issued more orders than others, the Commission is unable to ascertain the degree of CBC usage as an alternative, since data regarding the number of cases each Magistrate Court reviewed during the same period that were eligible to be considered for CBC is required to assess the usage of CBC. However, the fact that in 2017, 93% of the total convicted prisoner population was

¹⁰⁵³ DOP Prisons Statistics of Sri Lanka – Vol 38. 2019

¹⁰⁵⁴ ibid s 6 (1), “If a court finds a person guilty of an offence, may before passing sentence on such person and for the purpose of (a) determining whether it is suitable to enter CBC in respect of the offender; (b) ascertaining whether there are facilities for carrying out such order; (c) obtaining advice, as to the most appropriate conditions that should be attached to the proposed order; require the Commissioner to furnish to court, a written or oral pre-sentence report on such offender on or before a specified date and at a specified place, and may adjourn proceedings to enable the report to be prepared.”

in prison for two or less than two-year sentences, and hence, as per Section 5(1) of the CBC Act, are eligible for CBC is indicative of the limited use of CBC.

In 2017, 13, 236 persons were imprisoned for the failure to pay fines, which is 58% of the convicted prisoners in 2017. As the Assistant Commissioner pointed out, many of those who fail to pay fines are from impoverished backgrounds and imprisonment would only further disadvantage them. If they were instead given CBC, it would provide them an opportunity to learn a new skill and earn a livelihood. This is highlighted in a working paper on Community Service Sentencing for non-payment of fines at WCP published in 1997 which states:

“The offences for which the law has mandated fines are obviously not grave crimes, nor those for which the deterrent effect of imprisonment was thought necessary. Those who could not afford to pay such fines are in reality in prison because of poverty, and short-terms in prison tend to degrade and humiliate the first offender, while the reconvicted person is encouraged to continue his criminal pursuits.”¹⁰⁵⁵

Since the publication of the working paper twenty years ago, the circumstances of those who are imprisoned for the non-payment of fines has not undergone much change, and the Commission observed several people from impoverished backgrounds in different prisons for the non-payment of fines. For instance, an offender who was a labourer by profession was imprisoned for a period of three months, because he was unable to pay a fine of Rs. 3000. He informed the Commission that he was the sole bread winner of the family and in his absence, there was no one to provide for the family. When people from such backgrounds are imprisoned for the non-payment of fines, it also adversely impacts their family and dependents and only serves to further marginalize them.¹⁰⁵⁶

The Assistant Commissioner stated that when he visited every person with a CBC order in the North Western province, as part of a special programme to address illicit alcohol dependence, he witnessed the extent of poverty of such substance abusers. He described it thus:

“377 offenders have completed their treatment for illicit alcohol dependence. I personally visited the homes of each one. If you go to their houses, you can see how they are living. They don’t even have proper shelter. They do not have anything to eat. When I went to one house, I think it was around 1400h, they had not even had breakfast or lunch that day because they did not have anything to cook... But unfortunately, most courts and police, they are not thinking about this reality... This is a much larger social issue we have to address. Imprisoning people is not the answer. Community based correction is how we can build the communities of these offenders”.

¹⁰⁵⁵ Kamal A. Peiris, ‘Working Paper on Community Service Sentence’ (November 1997)

¹⁰⁵⁶ For a detailed discussion on the issues surrounding imprisonment in lieu of fines as punishment, please refer chapter Legal and Judicial Proceedings.

The positive impact of ordering CBC instead of imprisonment was illustrated by the Assistant Commissioner, who described the case of a woman who was arrested for selling illicit alcohol. When the Correctional Officer made inquiries about her, he found out that the woman had a disabled child to support and had no means of income. She was given vocational training as part of her CBC so that she could be self-employed and not resort to selling illicit alcohol to support her family. In another case, a man who was arrested for consuming illicit alcohol was taught to farm mushrooms, and is now able to support his family and educate his children.

As highlighted by the Assistant Commissioner and stated in the Annual Statistical Report 2019 of DOP, the cost of maintaining a prisoner per day in 2018 was Rs. 695, which amounts to a total of Rs. 253,608 per prisoner per year.¹⁰⁵⁷ In comparison, there is no cost associated with offenders referred to CBC on a daily basis because they are not housed or provided meals at the expense of the state. These statistics highlight not only the failure to effectively use non-custodial measures but also the immense potential of such alternatives to incarceration. This was also highlighted by a former CGP who stated:

“We are convicting far too many people who should not be in prison – fine defaulters, drug addicts. When it comes to individuals who cannot pay the fine, it is the government that ends up paying the fine because they keep them imprisoned for one month and shoulder the cost of imprisonment... We must imprison only those who deserve to be incarcerated”.

The other issue raised by the Assistant Commissioner is the reluctance of judicial officers to refer young people for CBC, which is instead mainly given to older people. He stated:

“They give it for people who are in their sixties or seventies. So, the youngsters are not given community-based corrections. Then we do not have opportunities to give them vocational training. They do not have a purpose. What we think is, if they sentence young people to community-based corrections, they can be rehabilitated easily”.

He further stated that even though there is no age limit prescribed for CBC, those below the age of eighteen are usually given probation instead of CBC. Since an award of probation does not usually contain a rehabilitative element, but is primarily focused on the monitoring and supervision of the offender, YOs would likely not benefit much from probation as they would from community-based corrections.

Correctional orders

Although the conditions stipulated in correctional orders can be made specific to the offender in question and in accordance with their skills, capacity and needs, according to the Assistant Commissioner, correctional orders with specific conditions are not often issued and they only mention the conditions of community service, but fail to state that the offender

¹⁰⁵⁷ DOP Prisons Statistics of Sri Lanka Vol 38. 2019

should be provided rehabilitative activities. In such instances, the CBC Department is prevented from providing rehabilitation to the concerned individual. For example, the order would only state that the offender should work a certain number of hours every week without stating that the offender should also be offered counselling, therapy, vocational training etc. By not issuing correctional orders that are based on a pre-sentence social report on the offender, thereby enabling the correctional order to be tailor-made for the specific individual, the full potential of the CBC mechanism cannot be realised and the positive impact of such an alternative to imprisonment on the offender is limited.

The common conditions prescribed in the correctional order are community work, supervision, rehabilitation, treatment or a combination of one or more. It was pointed out by the Assistant Commissioner, that the lack of understanding of the concept of community work results in it being viewed as menial work, whereby offenders are often assigned cleaning jobs.

3.2. The lack of infrastructure and resources

The Assistant Commissioner pointed out the continued lack of resources to undertake substantive and comprehensive programmes and stressed the need to increase the budget for CBC. The Assistant Commissioner highlighted the need for greater understanding of the purpose of CBC when deciding on the Department's budget. In 2018, while the Department had requested Rs. 20 million for a specialized rehabilitation programme on substance abuse, they only received Rs. 5 million. This resulted in the programme being limited in its scope and coverage. He said:

“People who are rehabilitated/treated by the programme expect and require support in order to become self-employed. If we don't make our intervention at the right time, they are at the risk of relapsing. If they don't have any other means of income, they will have no other place but to go back to the illicit alcohol dealer for work”.

The implementation and monitoring of CBC requires not only understanding the psychosocial reasons for substance dependence and crime, but also employing a variety of nuanced approaches. This requires CBC officers to be continuously trained in the newest approaches and best practices from other countries, which requires considerably increased allocation of resources to the Department. Vocational trainings are conducted with the assistance of the divisional secretariat offices of the Vocational Training Authority (VTA), providing assistance. Along with the lack of financial resources, the Department of CBC and the NDDCB do not have adequate infrastructure facilities and human resources to provide adequate vocational training programmes and monitor persons who underwent CBC to evaluate the effectiveness of the CBC system.

3.3. Shortage of human resources

According to the Performance Report of 2017, the Department of CBC has only ten senior CBC officers, 106 CBC officers and 114 work supervisors. The Assistant Commissioner stated that although each Magistrate's Court is allocated one CBC officer and one supervisor, the amount of work involved in each CBC order is often not manageable by two officers in each court. The Assistant Commissioner stated that in order to improve efficiency and responsiveness to the needs of the communities, they require at least an additional 300 officers.

The Commission observed that the starting basic salary of a CBC officer is only Rs. 34,605.¹⁰⁵⁸ This, as pointed out by the Assistant Commissioner, is one of the reasons for the difficulties encountered in recruiting CBC officers. The Assistant Commissioner stressed that functioning as a CBC officer requires one to have a strong sense of social justice, the ability to empathize with offenders and understand the socio economic and psychological context of crime, which also requires "educated people to understand important social issues like the social reasons for crime".

Due to the severe staff shortage at the Department of CBC, upon request, the Ministry of Public Administration arranged for Development Officers to be assigned to work as CBC officers. Currently there are 263 such officers based in Divisional Secretariats, with officers in the Southern, Western and Sabaragamuwa Provinces monitoring alcohol and drug dependent offenders who are on CBC orders. The Assistant Commissioner highlighted that about one hundred Divisional Secretariats do not have a single CBC officer, such as the Colombo suburbs, Anuradhapura and many District Secretariats in the North and the East. CBC officers from other areas cannot be sent to the North and East where CBC officers are lacking, due to the lack of Tamil proficient CBC officers in general. As of 2019, according to the Assistant Commissioner, about 13,000 persons holding CBC orders are being monitored around the country by only about 500 CBC officers.

The Assistant Commissioner stressed that in particular, Divisional Secretariats in the Central, North Western, Uva, North Central, Eastern and North are areas identified to be grappling with a multitude of socio-economic issues, such as entrenched poverty, substance abuse, domestic violence, unemployment and climate change related adverse impact on agriculture where CBC can help strengthen the communities by addressing these issues.

3.4. Lack of adequate training

As per TR 16.2, all staff must be given training that includes instruction on the nature of non-custodial measures, the purpose of supervision, and the various modalities of the application of non-custodial measures before entering the service. Further, TR 16.3 states that these staff should be given regular trainings to improve their knowledge and capacity.

¹⁰⁵⁸ As stated in the recruitment advertisements for CBC officers in January 2019

The CBC Act however does not have any provision regarding the recruitment and training of correction officers. The Assistant Commissioner stated that newly recruited correctional officers are given training during a fifteen-day induction period. The training programme includes extensive workshops on the CBC Act, the purpose of CBC, the process of CBC, specific means of rehabilitation, specific treatment programmes for substance dependent persons and an overview of the general legislation relevant to CBC officers. According to the CBC Performance Report 2017, there are regular capacity building programmes held for correctional officers, development officers and work supervisors. There have been thirty-eight capacity building programmes held for the year 2017.¹⁰⁵⁹

Since CBC officers perform a variety of functions, they require training on diverse issues. For instance, in order for CBC to function as a successful non-custodial measure, CBC officers are required not only to monitor any breaches of the correctional orders, but also to monitor and evaluate the long-term rehabilitative nature of such orders. For example, a drug offender could be issued a CBC order for a year, which requires him/her to enter a rehabilitation programme for three months, and then to follow up with a vocational training programme for three months, followed by community service activities at the court house for the remainder of the year. Hence, the role of the CBC officer is not limited to monitoring the participation of the offender in each activity, but also to ensure that the possibilities of reoffending are identified and addressed. This requires the CBC officer to play a comprehensive monitoring and intervention role, for which the officer could be required to undertake weekly visits to the CBC order holder's house. Such a visit would involve monitoring the conditions at home to evaluate the level of family support and social safety net measures in place, as well as the environmental triggers that could lead to reoffending. Identifying these factors is important to evaluate the level of support the person receives in his/her recovery and rehabilitation. Officers are therefore required to be trained to make such evaluations and provided with resources to take necessary steps to address issues when identified.

The pilot programme the CBC Department initiated in the North Western province, on managing alcohol, tobacco and drug dependent persons, including consistent monitoring of substance dependent persons in 2018, which was ongoing as of early 2019, illustrates the range of skills that CBC officers are expected to possess. An important feature of the programme is constant family visits by CBC officers through which the family is also included in the holistic recovery of the offender. Such comprehensive monitoring requires that each CBC officer is technically equipped and that an adequate number of CBC officers are available to provide dedicated and individualized support and monitoring to each offender issued a CBC order.

4. The rehabilitation of drug dependent persons

Drug dependence is a complex, multifactorial bio psychosocial public health issue that often requires medical and psychological responses and should be treated by the health system. When the judicial system addresses drug use by criminalizing it instead of exploring

¹⁰⁵⁹ Department of Community Based Corrections, *Performance Report*, 2017, p 36.

alternate measures, it criminalizes a public health issue, which is both an inhumane and disproportionate response.

Evidence suggests that persons who may be drug users are considered drug dependents due to simplistic testing measures that use urine or blood testing to screen the presence of illicit substances, which are then used to declare a person drug dependent. Where persons are found to be drug dependents, they must be diverted from the incarceration system and directed to drug rehabilitation and treatment¹⁰⁶⁰. However, any treatment programme must be subject to the full informed consent and voluntary participation of the individual in question, in line with the international standards for human rights-compliance healthcare. This is enshrined in Article 12 of the International Convention on Economic, Cultural and Social Rights which affirms the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The General Comment No. 14 on Article 12 affirms that the right to health includes the right to be free from non-consensual medical treatment.¹⁰⁶¹ When drug users are arrested for offences of consumption and possession of drug for personal use, non-custodial penalties should be applied as much as possible to avoid disproportionate custodial punishments for non-violent crimes.

According to the CBC Performance Report 2017, of the CBCs granted in 2017 64.92% were for substance abuse. i.e. both drugs (33.49%) and illicit alcohol (31.44%).¹⁰⁶² Since the majority of offenders referred to CBCs are persons perceived as drug and illicit alcohol dependent persons, the CBC Department holds specific programmes to address these issues. In 2017, the CBC Department began a special initiative to rehabilitate such persons in the North Western Province, because it reported the highest number of persons (94.4%) in this category. As per the latest NDDCB Monthly Report for October 2018, 6923 persons were arrested for drug related offences during September and October in 2018.¹⁰⁶³ Of these arrestees, 2490 persons were arrested in September and 4433 persons in October, which is an increase of 78% in comparison to September.

The Commission came across several examples of recidivism amongst drug users who are imprisoned due to the limited use of non-custodial measures. The case of a female inmate at WCP, who has been in and out of jail since 1987 for drug offences, is an example of this. Due to the lack of rehabilitation options and family support, the said inmate has been to prison nine times in the last thirty years. CBC interventions for such persons, who do not have access to the same kind of rehabilitative environment in prison, are thus very important.

WHO has identified drug dependence as a public health crisis that requires multifaceted interventions.¹⁰⁶⁴ WHO states that 'the Tenth Revision of the International Classification of

¹⁰⁶⁰ United Nations Office on Drugs and Crime & World Health Organization, *Treatment and Care for People with Drug use disorders in contact with the criminal justice system; Alternatives to Conviction or Punishment*, March 2018

¹⁰⁶¹ Committee for Economic Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000

¹⁰⁶² Department of Community Based Corrections, *Performance Report*, 2017, p 13.

¹⁰⁶³ National Dangerous Drugs Control Board, *Drug Related Information Monthly Report*, October 2018

¹⁰⁶⁴ WHO, 'WHO Expert Committee on Drug Dependence'

Diseases and Health Problems (ICD-10) defines the dependence syndrome as being a cluster of physiological, behavioural, and cognitive phenomena in which the use of a substance or a class of substances takes on a much higher priority for a given individual than other behaviours that once had greater value'.¹⁰⁶⁵ The joint UNODC and WHO programme highlights the importance of [developing] 'comprehensive, integrated health-based approaches to drug policies that can reduce demand for illicit substances, relieve suffering and decrease drug-related harm to individuals, families, communities and societies'.¹⁰⁶⁶ Drug users and dependents may engage in criminal offences such as theft, robbery, assault and burglary that are driven by their drug use and 'drug use disorders', while other crimes such as those resulting from violent impulses can be a result of being under the influence of drugs.¹⁰⁶⁷ This highlights the need for a comprehensive and holistic approach toward drug prevention and control policies, instead of only penal options.

4.1. Treatment for drug dependent persons

Sections 9 (1) (iv) and (v) of CBC Act stipulate that as part of the conditions of the CBC order the court or the CBC officer may direct the offender to undergo assessment and treatment for drug dependence. The Drug Dependant Persons (Treatment and Rehabilitation) Act¹⁰⁶⁸ stipulates that a Magistrate may send to compulsory treatment and rehabilitation 'any person that is convicted and sentenced for an offence under the Poisons, Opium and Dangerous Drugs Ordinance for a period of time as may be determined by Court taking in to consideration the degree of dependence, if it is satisfied by evidence on oath led before such Court that such person is a drug dependant person'. The compulsory nature of the rehabilitation means that it does not adhere to international standards for human rights-compliance healthcare, which requires informed consent and voluntary participation in any rehabilitation programme. Detention for the purpose of mandatory drug treatment has been identified as constituting arbitrary detention by international human rights entities.¹⁰⁶⁹ Further, the Working Group on Arbitrary Detention has stated that 'detention and forced labour are not scientifically valid means to treat drug dependence and drug "rehabilitation"

<https://www.who.int/substance_abuse/right_committee/en/> accessed 20 November 2018

¹⁰⁶⁵ WHO, 'Dependence syndrome'

<https://www.who.int/substance_abuse/terminology/definition1/en/> accessed 20 November 2018

¹⁰⁶⁶ WHO, 'The Joint UNODC/WHO Programme on Drug Dependence Treatment and Care'

<https://www.who.int/substance_abuse/activities/unodc_who/en/> accessed 20 November 2018

¹⁰⁶⁷ UNODC & WHO, 'Treatment and care for people with drug use disorders in contact with the criminal justice system: Alternatives to Conviction or Punishment' (March 2018), 6

<https://www.unodc.org/documents/UNODC_WHO_Alternatives_to_Conviction_or_Punishment_2018.pdf> accessed 20 November 2018

¹⁰⁶⁸ S Drug Dependant Persons (Treatment and Rehabilitation) Act (No. 54 of 2007), s 10

¹⁰⁶⁹ 'United Nations entities call on States to close compulsory drug detention and rehabilitation centres and implement voluntary, evidence-informed and rights-based health and social services in the community'- Joint Statement on Compulsory drug detention and rehabilitation centres by: International Labour Organisation; Office of the High Commissioner for Human Rights; United Nations Development Programme; United Nations Educational, Scientific and Cultural Organisation; United Nations Population Fund; United Nations High Commissioner for Refugees; United Nations Children's Fund; United Nations Office on Drugs and Crime; United Nations Entity for Gender Equality and the Empowerment of Women; World Food Programme; World Health Organisation; and Joint United Nations Programme on HIV/AIDS.

through confinement or forced labour are contrary to scientific evidence and inherently arbitrary'.¹⁰⁷⁰

As Sections 9 (1) (iv) and (v) of CBC Act stipulate that when an offender is referred to a medical evaluation to identify drug dependency, the MO recommends whether inpatient or outpatient care is required, depending on the offender's level of dependency. This assessment is important for the CBC to be successful in the case of substance dependents as treatment can be provided as part of the CBC order. However, as the Assistant Commissioner pointed out, many MOs refrain from identifying whether an offender is drug dependent or not since the present medical approach to evaluate a patient is not sufficient to determine dependency. He stated that many state-run hospitals in the country, to which persons are taken for the medical assessment, are severely under resourced and drug testing, such as blood, urine, hair sample testing, is thus often not considered a high priority by hospital labs, which prioritize care for critical patients. Testing of blood, urine and hair only allows the detection of the presence of illicit drugs, and results in drug users and dependents being grouped together and recommended for treatment programmes, whereas only the latter may require treatment for substances dependency while drug users would not require treatment.

In addition, even if the MO of the GH is of the opinion that in-patient care is required for a specific person, GHs do not accept drug dependent patients due to the lack of accommodation facilities designed for such dependents. Therefore, CBC officers have to rely on NDDCB rehabilitation centres, which are limited in number and have a number of shortcomings as discussed below.

The Director of NDDCB stated that the State needs to open more rehabilitation centres to treat those who require drug treatment, because of the volume of people they receive every year. He illustrated this by saying:

“When the Magistrate orders someone to be directed to us, we have to take them in for rehabilitation. We also become helpless at times because we don't have enough space. We do not have the capacity to meet the demand. So, we suggest that the government open new rehabilitation centres. The longer the waiting list, the greater the number of crimes taking place in this country. More treatment centres must be established”.

This was also highlighted by the Assistant Commissioner who said, “Although treatments require in-house rehabilitation for a period of one to two months, NDDCB does not have enough bed capacity to accommodate all persons referred for CBC. Currently, the centres run by the NDDCB have the capacity to hold only 200 patients at a time while 9299 (2983 Heroin) (1813 Cannabis) (4503 Illicit liquor) drug dependents were referred to CBC in 2017.¹⁰⁷¹ Mr. Shanaka Jayasekera, UNODC representative in Sri Lanka, highlighted the same and said, “We

¹⁰⁷⁰ Report of the Working Group on Arbitrary Detention at the Thirtieth Session of the Human Rights Council, 10 July 2015.

¹⁰⁷¹ Department of Community Based Corrections, *Performance Report*, 2017, p 13

also need to have more rehabilitation centres. The government currently has only three centres.¹⁰⁷² Medical assistance for drug dependent persons is insufficient as there are 65,000 heroin users in Sri Lanka. This cannot be done overnight – clinical, psychological experts and pastoral care is needed". While drug dependents on CBC orders wait for a place in a NDDCB run treatment centre, the critical time period where intervention is possible may lapse. It was also mentioned by the Director of the NDDCB, that there are no resident doctors at the NDDCB treatment centres to treat drug dependent persons and doctors are said to visit the centres only once a week. When persons with severe withdrawal symptoms are presented, they would be taken to the GH and admitted for treatment. Further, due to the lack of staff, NDDCB centres are unable to take them to GH for regular treatment as required due to the lack of staff and other resources, such as vehicles.

The above statements, though seemingly well-intentioned, illustrate that there is little to no acknowledgement that drug rehabilitation must be voluntary and done only with full and informed consent. The absence of this core principle in the approaches of most state entities points to the need to ensure that policy and practice are in line with international standards for human rights-compliance healthcare.

Persons who require medical treatment in addition to CBC rehabilitation programmes, are directed to GH for outpatient medical care. The Assistant Commissioner, however, stated that there is an inadequate number of medical personnel to treat drug dependent persons at GHS resulting in the rescheduling of appointments for clinics, by which time the period of the correctional order would have lapsed. It was also reported that in certain instances doctors prescribe medicines to drug offenders which they are required to buy themselves instead of providing a feasible treatment plan. Since most of these offenders are from impoverished backgrounds, they do not have the financial means purchase such medicine.

NDDCB centres' rehabilitation programmes are reportedly designed to help drug dependent persons re-establish a normalized lifestyle and behaviour, with the aim of helping the individuals to become independent and to limit the possibilities of relapsing. They are said to have activities such as individual and group counselling, educational programmes, meditation and mindfulness programmes, self-care and maintenance, as well as work projects, such as landscaping, pottery, welding, carpentry and recreational activities, such as sports and theatre are included in the rehabilitation programmes in the NDDCB centres. The Commission did not visit these centres and was not able to assess the existence or efficacy of these programmes.

Measures to provide drug rehabilitation and treatment programmes for persons who wish to access treatment and rehabilitation for substance dependency should be based in the community by involving a 'multisectoral approach'¹⁰⁷³ with the engagement of civil society organisations, independent experts and volunteers, and employ evidence-based treatment methods that are subject to the consent of the individual and their voluntary participation.

¹⁰⁷² Weerawila, Kandarkadu Rehabilitation Centre (KRC) and Ambepussa

¹⁰⁷³ Pascal Tanguay, Claudia Stoicescu, Catherine Cook, 'Community-based drug treatment models for people who use drugs', *Harm Reduction International*, October 2015.

Mandatory detention or confinement for the purpose of drug rehabilitation and treatment should be avoided in order to prevent alternatives to incarceration measures from becoming de facto forms of imprisonment.

Currently the NDDCB is within the purview of the Ministry of Defence, rather than the Ministry of Health, illustrating the law and order approach that is being pursued towards drug prevention and treatment instead of a public health approach. It is the Ministry of Health that must be responsible for national drug prevention and awareness measures as well as to monitor treatment and rehabilitation centres to which persons who wish to seek drug treatment can voluntarily be admitted.

4.2. The lack of uniform sentencing

There is no uniform sentencing procedure for those arrested for drug related offences. There is no mechanism in the post arrest legal process that allows to intelligibly differentiate between those who are users and those who are accused of dealing and trafficking. There must be a differentiation, such that drug dependent persons who have not been involved in selling or trafficking should not be imprisoned. As stated by the then AG, "We must find a way to differentiate between addicts and dealers and sentence them accordingly". Hence, the legal provisions need to be amended to address drug dependent persons differently from those accused of drug related offences. This was also highlighted by the UNODC representative who stated:

"There is a need for legal reform in how sentencing is done. We need to move away from quantitative sentencing. Not all drug addicts should be sent to prison. Judges need to be given the freedom to call for independent reviews, and to order non-custodial sentences such as serving sentences at rehabilitation centres. Sri Lanka needs to rectify its legislative framework".

When the Focal Point at the MOJ was queried about the measures taken by the MOJ to address the mass imprisonment of individuals for drug related offences, he stated thus:

"Now, the NDDCB, MOH, skill development and vocational development department are coming together to rehabilitate these people. We have asked the Chief Justice [to instruct judges] not to send them to prisons but to send them to other rehab centres".

5. Probation

Probation is the least restrictive form of punishment in lieu of incarceration. It allows offenders to remain in their own residence, although the conditions of probation may vary depending on each individual. Probation, as a non-custodial measure is provided in the POO, which was last amended in 1948. The Department of Probation and Child Care Services, which is within the purview of the Ministry of Women and Child Affairs, is assigned the responsibility of overseeing the probation system.

5.1. Legal provisions

Unlike the CBC Act, the POO does not provide a threshold to decide to whom probation should be awarded and it is decided on a case-by-case basis. When the court issues a probation order it must take into account the circumstance of the case, the nature of the offence, sex and condition of the offender and if it appears that probation is more suitable, it shall do so in lieu of sentencing him/her to any other punishment.¹⁰⁷⁴ Further, Section 4(1) of POO states that the court shall request the Commission of Probation and Child Care Services to furnish a report on the character, antecedents, environment, and mental or physical condition of the offender. Additionally, the Commissioner must also state the suitability of the case for supervision under probation, and whether the supervision of the offender can be undertaken by the probation officers of the division, having regard to the number of offenders who are under the supervision of such officers. Further, the court also has the power to remand the offender for a maximum period of twenty-eight days, until the report is furnished by the Commissioner.¹⁰⁷⁵

Similar to the community correctional order provided by the court, the probation order, which is also issued by the court, must provide detailed conditions of the probation order¹⁰⁷⁶ and must be explained to the offender in a language that is known to her/him¹⁰⁷⁷. This satisfies the minimum standard provided in the Tokyo Rules.¹⁰⁷⁸ The POO also provides the time period for which probation order can be issued, which is a period of not less than one year but not more than three years.¹⁰⁷⁹

The POO also makes provisions for when the probation order may be modified or cancelled.¹⁰⁸⁰ It states that the probation order made by the court can be cancelled or certain conditions of the order may be modified upon the written application by the offender, or by or on behalf of the Commissioner. If the court is satisfied with the representation made, s/he shall either amend any condition in the probation order accordingly for the rest of the probationary period, or may after the expiry of one half of the probation period, cancel the said probation order or reduce the period of duration under the order.

Further, POO also stipulates the consequence of non-compliance with the probation order. Section 12 of the POO states that where the Magistrate Court is satisfied by the information provided by the Commissioner or the probation officer that the offender for whom probation was issued has violated any condition of the probation order, s/he may issue a warrant of arrest of the said individual, or may summon the offender to court. If it is proved to the satisfaction of the court that the offender has violated a condition of probation, s/he shall either allow for the continuation of the probation order in addition

¹⁰⁷⁴ Probation of Offenders Ordinance No. 42 of 1994, s 3(1)

¹⁰⁷⁵ ibid s 4 (3)

¹⁰⁷⁶ Ibid s 5 (1)

¹⁰⁷⁷ ibid s 4 (2)(a)

¹⁰⁷⁸ Tokyo Rules 1994, r 12.3

¹⁰⁷⁹ Probation of Offenders Ordinance No. 42 of 1994, s 8

¹⁰⁸⁰ ibid s 10

to paying a fine of Rs. 150, or cancel the said order and convict him under the relevant law for his original offence. This is in line with the Tokyo Rules, since it provides the offender another means through which to continue his/her probation in the event of non-compliance, instead of automatic imprisonment.

The POO is a progressive law that should be used as an alternative to imprisonment but is currently not in use. When inquired from various practitioners, it was noted that most persons did not know the existence of such a law, since it was not in operation. Additionally, when the Commission inquired from the Department of Probation and Child Services about the system of probation which falls within its mandate, the Commission was informed that although the POO falls within its purview, the Probation Department does not handle the probation of adult offenders.

6. General observations

Although the Sri Lankan legal system provides for alternatives to incarceration, they are very rarely used. This is evident from the number of inmates who are in prison for minor offences and for the non-payment of small fines. There is no proportionality between the offence and the punishment given, which is particularly the case in drug related offences where the legal system does not differentiate between users, dealers and traffickers. Further, it was observed that, although the CBC Department and the NDDCB are eager to provide drug rehabilitation to offenders, they do not have the required resources to do so. There are inadequate medical personnel in both the rehabilitation centres and GHs and very few treatment centres to house patients. Moreover, it was noted that the POO is defunct and there is little or no knowledge of it amongst those in the criminal justice sector.

As discussed in the chapter on Rehabilitation of Prisoners, the current Sri Lankan prisons system is not equipped to provide individualized rehabilitative programmes to the large number of offenders that are imprisoned every day. Further, imprisonment tends to exacerbate difficult familial conditions of persons, most often depriving the family of the sole/main livelihood earner.

Non-custodial measures when used well could substantively address core issues affecting the prison system, such as over-crowding and rehabilitation. It is however important to re-evaluate non-custodial measures regularly and innovate according to changing socio-economic conditions. Presently, drug users and drug dependents are both sentenced to mandatory drug rehabilitation in centres managed by the State, which is contrary to human rights standards and can constitute arbitrary detention. Persons do not have a choice on whether they wish to undergo treatment and the use of compulsory detention is incompatible with the aims and purposes of non-custodial alternatives to imprisonment.

Recommendations

The study of prisons initiated by the Human Rights Commission of Sri Lanka was carried out with the objective of filling the gap that exists in the understanding of prisons, penal and correctional system as well as the broader criminal justice system in Sri Lanka. The study adopted both qualitative and quantitative methodologies and included extensive data collection at the ground-level, supported by all stakeholders including officials from the selected prisons and the Department of Prisons. As a comprehensive study on prisons in Sri Lanka, this study focuses on both physical and social dimensions of prisons and inmates, the meaning of incarceration and correctional systems as well as the legal framework within which the prison system exists.

Based on the evidence from the study, the following recommendations are compiled with the objective of improving and enhancing the prison system in particular and the criminal justice system in general. These recommendations therefore are divided into three broad sections, focusing on specific implementation mechanisms. They are:

1. Improve physical conditions and administration of prisons
2. Enhance the welfare of prisoners
3. Reform the criminal justice system

These broad sections correspond to separate implementation strategies that could be applied by the Department of Prisons in line with the UN Standard Minimum Rules for the Treatment of Prisoners, and adapted to the Sri Lankan context so that the recommendations put forward can be achieved meaningfully. Each broad section comprises relevant categories from the prison system which correspond to the chapters in the study. These categories are then subdivided into specific areas of concern with recommendations proposed for each of them. It is envisaged that follow-up action would be taken by relevant authorities to improve the conditions of prisons, enhance the welfare of prisoners and reform the criminal justice system with a view to promoting a better understanding of the correctional system.

1. Improve Physical Conditions and Administration of Prisons

No	Category	Areas of concern	Recommendations
1.1	Accommodation		
1.1.1		Overcrowding	<ul style="list-style-type: none">• Implement the recommendations contained in the 'First Report of the Taskforce on Judicial and Legal Causes for Prison Overcrowding and Prison Reform' issued on 9th November 2016.
1.1.2		Segregation of prisoners	<ul style="list-style-type: none">• Segregation of the entire prison effectively along with thoughtful use of existing ward facilities.• Hold Young Offenders in separate areas and not in adult prison facilities.• Impose strict segregation between First Offender, Reconvicted Offenders and Recidivists within the same prison with suitable infrastructure and the formulation and implementation of different types of rehabilitation programmes conducted by qualified staff.• House prisoners with special needs in spaces that are disability accessible.• Transfer persons arrested for only drug use to rehabilitation centres and not keep in prison.• Update and complete the personal files of prisoners as they are used to determine the factors upon which segregation is based, such as information on sex and age, criminal record, the legal basis for their detention and their programme of rehabilitation, cell number or bed number to which they are assigned upon admission as well as details of their classification.

1.1.3		Distance from families and household	<ul style="list-style-type: none"> • Accommodate prisoners, as much as possible, close to their families to enable regular family contact and social re-integration. • Transfer prisoners serving the last six months of their sentence to a prison close to their home to facilitate their re-entry into society.
1.1.4		Design, plan and conditions of prison	<ul style="list-style-type: none"> • Develop a National Standard on Prison Design based on international standards such as 'Water, Sanitation, Hygiene and Habitat in Prisons' by International Committee of Red Cross (2013), along with the insight of local experts, such as architects and engineers, on making use of traditional architectural knowledge on temperature management, ventilation and vector control etc. • Use local and traditional knowledge for a more economical solution. • Appoint a design team that is multi-disciplinary and include security experts, psychologists, teachers, prison officers, and medical professionals. • Develop a plan to refurbish and repair dilapidated wards and buildings in prisons, and adequate financial resources should be allocated to Department of Prisons to enable implementation within a stipulated period. • Consider the need for easy access to essential services such as hospitals and other institutions during an emergency when relocating prisons from urban areas to rural areas and building new prisons in rural areas, as well as easy accessibility for families of prisoners through public transport.

			<ul style="list-style-type: none"> • Introduce policies for newly-convicted prisoners who are eligible to serve their sentence in an open camp or work camp to be transferred directly to the camp from the court, instead of being held at Welikada Prison in transit.
1.1.5		Disaster management response	<ul style="list-style-type: none"> • Adopt a comprehensive Disaster Risk Management Plan for each prison, and the prison staff and prisoners should undergo regular training on responding to a disaster, both natural and manmade. • Include a protocol for the arrangement of vehicles to transfer prisoners en masse in an emergency, and alternative premises where prisoners could be temporarily housed. • Provide relevant training for prison officers in disaster management. 0. Ensure through special provisions the safety of persons with disabilities, special needs and elderly prisoners who may potentially suffer the most harm in the event of a disaster. 1. Ensure that prisons are provided with the required implements and equipment, such as fire extinguishers, to deal with a disaster.
1.1.6		Oversight and scrutiny of living conditions	<ul style="list-style-type: none"> • Subject living conditions of prisoners to greater oversight and scrutiny, without which amounts to torture, cruel, inhuman and degrading treatment and punishment.
1.2	Food		
1.2.1		Quality of food	<ul style="list-style-type: none"> • Inspect the quality and hygiene of food preparation daily as per Sections 25, 55 and 97 of The Subsidiary Legislation under the Prison Ordinance of 1956. • Employ trained cooks and nutritionists to plan and prepare meals taking into account the local produce available in the

			<p>region as well as the nutritious value of the meals, instead of assigning inexperienced prisoners to prepare meals.</p> <ul style="list-style-type: none"> • Appoint an officer in-charge of the kitchen to monitor and ensure that proper standards, both domestic and international, are followed. • Until trained cooks are employed, the prison officers and the Medical Officer should train prisoners on hygienic practices in food preparation, especially those assigned to the 'kitchen party'.
1.2.2		Kitchen hygiene	<ul style="list-style-type: none"> • Allocate funds for pest control methods and rodent infestation control mechanisms in the kitchens by contracting the Municipal Councils or private contractors to undertake this task. • Implement a proper waste disposal system, preferably where food waste could be turned into compost. • Develop and implement a policy on sustainable food waste disposal across all prisons.
1.2.3		Kitchen inspection and control	<ul style="list-style-type: none"> • Public Health Inspector to undertake random visits to the prison and inspect the sanitary conditions of prison kitchens, the quality of the food rations as well as the manner in which food is prepared. • Implement necessary security measures and maintain detailed records of rations received and subsequently utilized to track any missing rations. • Conduct inquiries into allegations of corrupt practices in the kitchens of prisons.

1.3	Water, Sanitation and Personal Hygiene		
1.3.1	Clean and adequate sanitary facilities		<ul style="list-style-type: none"> • Address overcrowding in prisons to provide adequate facilities. • Ensure that the supply of water provided to prisoners is in line with international standards and available throughout the day. • Maintain water points and sanitary facilities with prompt attention to malfunctioning or broken fittings. • Appoint Prison officers to monitor the conditions of toilet facilities and report required repairs to the administration. • Clean septic tanks and drains regularly to be monitored by prison officers and PHIs.
1.3.2	Clean and sufficient water supply		<ul style="list-style-type: none"> • Maintain “buffer stocks” of water when water cuts and water shortages are inevitable, give prior notice of the shortage to prisoners, and provide water from the “buffer stock” or bowlers. • Establish a water purification system inside the prison and ensure that the quality of water is routinely assessed by PHIs. • Ensure that the prison administration abide by the timetable as far as possible where water is supplied only at assigned times. • Provide prisoners the opportunity to obtain sealed containers to store water for drinking purposes.
1.3.3	Personal hygiene to minimize the spread of germs and illnesses		<ul style="list-style-type: none"> • Allow prisoners the chance to bathe twice a day if they wish and allocate sufficient time to wash their clothes and the use toilets.

		<ul style="list-style-type: none"> • Store water in proportion to the number of inmates who are housed in a ward. • Allow as far as possible, additional outside time for exercise and fresh instead of being required to wash their clothes and bathe during assigned outside hours. • Renovate bathing facilities in a manner that is disability accessible and provide prisoners the opportunity to wash themselves with adequate privacy. • Ensure prisoners are allowed buckets with sufficient capacity and allowed an adequate number of buckets to clean themselves where there are no showers, in line with international standards. • Ensure that sanitary facilities guarantee the maximum possible privacy and where they are not, re-construct them in a manner that enables prisoners to use them with dignity, and without their privacy being compromised. • Arrange for sanitary facilities both inside and outside the ward (including in punishment cells), so that they are available for use throughout the day and night since the dehumanisation of prisoners and the loss of their dignity when completing basic human functions is an impediment to the rehabilitation process. • Develop a system of flushing and sluicing water after using toilets to enable toilets to be kept clean and prisoners should be provided water for flushing away excrement in addition to water provided for other personal sanitation needs.
--	--	--

			<ul style="list-style-type: none"> • Allocate funds for the provision of cleaning agents to prisoners to maintain cleanliness and hygiene of their wards and the bathrooms. • Ensure places that cut hair inside prisons are well-maintained and all equipment used is sterilized frequently. • Establish a system similar to the one in Badulla Remand Prison where basic provisions are provided to new entrants, to be replaced by the items they receive when their families visit them. • Initiate a system of regular provision of toiletries to convicted and condemned prisoners, sanitary napkins for female prisoners, as well as remandees who cannot obtain such articles from family visits. • Implement regular fumigation including fogging for mosquitoes with the assistance of other public health institutions, and PHIs should be required to undertake regular inspections of prison facilities to assess the health risks posed to inmates.
1.4	Entrance and Exit Procedure		
1.4.1		Admission procedure	<ul style="list-style-type: none"> • Establish a mechanism for prisoners, both local and foreign to notify their families immediately, or within a reasonable period of time, of their imprisonment via phone, or provide the contact details of the relevant diplomatic service if the inmate is not aware of such details, to phone the relevant consulate. • Ensure prisoners are examined thoroughly for injuries sustained prior to admission due to possible violence faced in police custody or by a third-party.

		<ul style="list-style-type: none"> • Provide prisoners to be photographed and any injury marks to be recorded at the time of admission, rather than during the registration process, to place an accurate timestamp on any injury marks. • Establish a procedure/system that makes it mandatory for prison doctors to present inmates before the Judicial Medical Officer if they are found bearing visible marks of injuries allegedly sustained in police custody, or if the inmate complains of being subject to torture in police custody. • Establish a mechanism to follow up on the complaint regarding police violence lodged by inmates at the time of admission and inform the National Police Commission and the Human Rights Commission of such cases. • Issue a circular specifying the procedure to be followed when conducting body searches and inform all prison officers and the prison police, that only a doctor is authorized to conduct a body cavity search on an inmate. • Facilitate the installation of new technology to counter the smuggling of contraband into prison and ensure that existing machinery, such as body scanners, are fully functional. • Introduce a uniform method of medical check-up upon admission by extending the International Committee of Red Cross pilot project on the initial health screening of inmates to all prisons with particular attention on those suffering from mental illnesses/distress and may experience suicidal tendencies.
--	--	--

			<ul style="list-style-type: none"> • Examine and inquire from those who undergo a medical examination on the day after their admission whether they were subject to violence on their first night in prison. • Conduct orientation programmes for all new prisoners in the language of their proficiency, to inform about the way in which the institution functions, rules and regulations, grievance mechanisms, and conduct that can amount to disciplinary offences, etc. • Establish a centralized electronic database of information documented during entrance, to maintain records efficiently and refer to previous records to check if a person is a reconvicted/recidivist prisoner. Officers should be provided relevant ICT training to manage the system and only designated officers should have access to this system. Prisoners' access to the database should be prohibited. • Introduce a uniform method of storing the personal belongings of prisoners, and issue a receipt outlining details of items deposited to the stores to ensure the security of inmates' personal belongings.
1.5	Access to Medical Treatment		
1.5.1		Medical facilities	<ul style="list-style-type: none"> • Upgrade the largest Prison Hospital in each region to a base hospital, containing all necessary facilities for prisoners within the region who have serious ailments and reserve a separate ward in the General Hospital closest to a prison as an interim measure for inmates that require in-patient care. • Assign at least one resident Medical Officer and a psychiatrist to treat prisoners during out of office hours and emergencies.

			<ul style="list-style-type: none"> • Establish a roster for consultants from the nearest General Hospital.
1.5.2		Training and sensitizing medical staff	<ul style="list-style-type: none"> • Provide medical personnel with adequate training to deal with prisoners and sensitize them on working in prisons. • Inform medical personnel their duties under the Prisons Ordinance, Departmental Standing Orders of 1956 and the Statutory Rules. • Send regular reports mentioned in the Prisons Ordinance, Departmental Standing Orders of 1956 and Statutory Rules to the Director General of Health Services at the Ministry of Health by the Medical Officer. • Maintain up to date records of all inmates seeking treatment as well as counselling at the Prison Hospital.
1.5.3		Transfer to other medical facilities	<ul style="list-style-type: none"> • Assign a specific day every month for specialty clinic that cannot be held at the Prison Hospital and can only be held at the General Hospital to prevent the re-scheduling of clinic dates. • Devise efficient means by Department of Prisons to prevent the delay in transferring inmates to hospitals caused by the shortage of officers by addressing human resource shortages as well as acquiring additional buses. • Provide financial resources by Department of Prisons for at least one ambulance for every prison and provide the services of an ambulance from the closest national medical institution to every prison to transfer prisoners in critical cases, in the interim. • Send the medical files of prisoners being transferred to other prisons without delay, so that prisoners on medication can

			<p>continue to receive their treatment in the new prison without interruption, and the Medical Officer at the new prison has access to the medical histories of all transferred patients.</p>
1.5.4		Mental health	<ul style="list-style-type: none"> • Establish measures including required legal reform, to divert mentally ill offenders away from the criminal justice system to treatment facilities. • Provide judicially supervised treatment services to non-violent offenders diagnosed with severe mental illnesses. • Establish a twenty-four-hour crisis centre, where Ministry of Health personnel provide psychiatric services to individuals experiencing emotional or mental health crises who are brought in by the police. • Implement comprehensive suicide prevention programmes in each prison, which includes the screening of new entrants to prisons and monitoring of inmates identified at risk of suicide. • Increase the cadre for counsellors so that each prison has at least one qualified counselling officer competent to deal with prisoners who require psychological services. • Provide all prison officers and Medical Officers regular trainings on suicide prevention by the Ministry of Health.
1.6	Contact with the Outside World		
1.6.1		Visits by family	<ul style="list-style-type: none"> • Enable regular family visits by housing offenders close to their homes. • Provide an alternative arrangement to families that live a long distance from prison such as permitting longer visits over several days.

			<ul style="list-style-type: none"> • Enact a policy of transferring prisoners who are nearing the end of their sentence to prisons close to their homes to facilitate reintegration into society. • Conduct family visits in a more humane manner, where prisoners are separated from their families by a glass barrier and phones are installed to ensure inmates can have conversations with their visitors without having to shout to be heard. • Provide seating areas so prisoners and their visitors, especially elderly visitors, pregnant women or persons with special needs, are able to comfortably engage in conversation during visits. • Use contact visits or extra time for visits as rewards for good conduct but refrain from curtailing the visitation rights of a prisoner as a punishment.
1.6.2		Proper monitoring of receiving food and parcels from outside	<ul style="list-style-type: none"> • Invest in technology, such as parcel scanners, x-ray scanners, to check food and other items brought by visitors to preserve the hygiene conditions of the food. • Minimize the number of food parcels brought for prisoners from families by improving the quality of food provided in the prison. • Establish hygienic and orderly means of inspecting food received from outside. • Extend the system available in Agunukolapelessa Closed Prison, which allows prisoners to obtain items from the prison canteen upon families purchasing the items and providing the receipt to the prisoner, and expand this system to allow

			families to top up the prisoner's credit even remotely, and allow the prisoner to use it to purchase any item in the canteen.
1.6.3		Communication via post and phones	<ul style="list-style-type: none"> • Improve the existing system of postal communication to ensure it is managed efficiently and without delays such as informing prisoners when their letters have been sent so that prisoners have knowledge of whether and when it was posted. • Recruit officers proficient in Tamil and English and provide language training to existing officers to facilitate communication between prisoners who are proficient only in Tamil or English and their families, by enabling officers to review letters written in Tamil or English, so that they can be posted to the families. • Establish phone booths, similar to the system in WCP, to enable prisoners to maintain contact with families and minimise the need to resort to banned methods of contacting their families, such as via the use of phones smuggled into prison. • Provide remandees and inmates on appeal with a separate facility to make phone calls to their lawyers at scheduled times, so that lawyers do not always have to visit prison to consult with their clients.
1.7	Grievance Mechanism		
1.7.1		Internal grievance mechanism	<ul style="list-style-type: none"> • Inform the inmates of the internal grievance mechanism during the orientation programme and such instructions to be displayed in writing, in all three languages within the prison premises for the inmates to refer. • Provide prisoners with unfettered access to the existing internal grievance mechanisms of the prisons system,

		<p>following International standards, such as the Standard Minimum Rules.</p> <ul style="list-style-type: none"> • Allow direct access to a senior officer of the prison administration without going through a subordinate officer. • Facilitate SPs and Chief Jailors to undertake regular inspection rounds to ensure that all inmates have the opportunity to voice their concerns directly to the Superintendent of Prisons or the Chief Jailer. • Maintain a complaints letterbox in easily accessible common areas of the prison, for private and confidential complaints to be lodged by prisoners, that can only be opened by the Chief Jailer or Superintendent of Prisons on a daily basis, without the risk of interference or interception by other prison officers, and direct the relevant officers or branches to take necessary action. • Ensure inmates receive full confidentiality and privacy when lodging complaints so that the fear of reprisals does not hinder them from complaining to SPs and external parties about their grievances. • Conduct immediate inquiry into any allegations from inmates that they are being subject to reprisals for making complaints against prison officers, by the Superintendent prioritizing the safety and wellbeing of the inmate and take strong action by the Department of Prisons against officers who are found to have engaged in such reprisals. • Provide training to prison officers on the importance of the internal grievance mechanism and the proper discharge of their duties to ensure that the requests and grievances of
--	--	---

			prisoners are forwarded to the relevant divisions or authorities.
1.7.2		External grievance mechanism	<ul style="list-style-type: none"> • Establish an impartial and independent mechanism to address complaints against officers when a complaint is made against an officer above the rank of a jailor, i.e. the Chief Jailor or the Superintendent of Prisons. • Provide inmates with a means to forward their complaints directly to the Commissioner General of Prisons, any Commissioner of Prisons or the Human Rights Commission without censorship, such as through complaints or letters addressed to the Commissioner General of Prisons or Minister of Justice which must not be opened by prison officers. • Ensure gender and ethnic balance in the Visiting Committees appointed by the Ministry of Justice and Prison Reforms as a body advocating for prisoners' welfare to inquire if prisoners have any complaints against the administration, without the power to impose any punishments on prisoners for making 'frivolous complaints.' • Facilitate access for inmates to submit their petitions or grievances directly to judicial authorities without censorship by post. • Install two complaint boxes in the prison premises, where they are accessible to any prisoner, to submit complaints to the Ministry of Justice and Prison Reforms or the Human Rights Commission, to be collected monthly by the respective institution. • Ensure that Ministry of Justice and Prison Reforms visits the prisons on a monthly basis and collect the written grievances

			<p>directly without the intervention of the prison authorities to safeguard transparency of the process</p> <ul style="list-style-type: none"> • Issue a letter of acknowledgement by the institutions to which prisoners submit complaints. • Establish a mechanism for prisoners who require legal assistance for their ongoing cases as well as for appeals, to seek legal assistance directly from the Legal Aid Commission through letters, and ensure that these letters are sent to the Legal Aid Commission with immediate effect to prevent delays in the judicial process. • Ensure the Magistrates who undertake prison visits submit visit reports to the Judicial Services Commission which should be shared with the Department of Prisons, Ministry of Justice and Prison Reforms and the Commission to enable these institutions to craft their initiatives to support existing processes in responding to the needs and concerns of prisoners. • Introduce a policy by the Judicial Services Commission, whereby remandees who are produced before a Magistrate in court, are first inquired about their treatment and conditions in prison by the Magistrate.
1.8	Inmate-Officer Relationship		
1.8.1		Capacity building of prison officers	<ul style="list-style-type: none"> • Provide relevant training for prison officers to shift their understanding of incarceration from a purely punitive measure to a rehabilitative process that seeks to ensure the successful social reintegration of prisoners.

			<ul style="list-style-type: none"> • Provide induction training for prison officers with rehabilitation and correctional policies as core principles. • Conduct regular training for officers on conflict resolution, non-violent communication and how to build a relationship with inmates that is conducive to rehabilitation i.e. dynamic security • Strengthen the existing complaint mechanism to enable both inmates and officers to report discriminatory and corrupt practices in prisons to prison authorities and where relevant to external authorities, such as the Human Rights Commission and the Commission to Investigate Allegations of Bribery or Corruption in a confidential manner, with action taken swiftly by the relevant entities to inquire into allegations made by prisoners against officers.
1.8.2		Conducive working conditions of prison officers	<ul style="list-style-type: none"> • Revise and increase the salaries of prison officers as recommended in the Chapters on Grievance Mechanisms and Challenges Faced by the Prison Administration, enabling them to work in a conducive environment and manage a system that seeks to rehabilitate persons. • Establish a permanent division within the Ministry of Justice and Prison Reforms for monitoring the functions of prisons and to submit reports periodically with suggestions for required reform. Officers of this division should conduct periodic prison visits during which officers should also receive grievances from prisoners and their families. • Undertake a corruption risk assessment to help identify potential corrupt practices.

1.9	Discipline and Punishment		
1.9.1		Use of physical force by prison officers	<ul style="list-style-type: none"> • Implement a zero-tolerance policy against physical violence and ensure the allegations on the use of undue or excessive force by officers are inquired into and action taken. • Initiate the prosecution of officers accused of committing offences under the Convention Against Torture Act. • Provide guidelines and training on the international standards related to the use of force, and train officers in the use of necessary and proportionate use of force as well as alternate measures of maintaining discipline and order in prison, and best practices to restrain and restrict prisoners in a manner which is not inhuman or degrading and that do not cause injuries should be introduced. • Adhere to safeguards in the use of force to maintain discipline, such as reporting and recording events where force had to be administered to restrain prisoners.
1.9.2		Offences and sanctions within prisons	<ul style="list-style-type: none"> • Provide information on prison offences and the respective sanctions in writing and display within the prison to ensure that all prisoners are aware. • Limit disciplinary sanctions to temporary removal of privileges and Prison Tribunal proceedings. • Avoid the use of solitary confinement as a sanction as much as possible, and when used in exceptional instances, adhere to international standards and guidelines.

1.9.3		Prison tribunals	<ul style="list-style-type: none"> • Ensure Prison Tribunal hearings are always conducted in a court where a prisoner has more opportunity to find legal representation with due process safeguards. • Provide access to legal representation and legal aid to prisoners produced before a Prison Tribunal. • Inform the inmates they are able to hire lawyers to represent them at Tribunal proceedings and provide access to communication facilities to summon lawyers through the Department of Prisons and Legal Aid Commission.
1.9.4		Improve working conditions of prison officers	<ul style="list-style-type: none"> • Improve overall conditions of the prison, specifically working conditions of prison officers, so that they refrain from ill-treating prisoners and justify such acts. • Establish a protocol by which MOs, of their own volition, are able to send prisoners who have been assaulted in custody to the Judicial Medical Officer, without requiring the approval of the SP, and ensure oversight mechanisms are in place to implement the MO's referral without delay.
1.10	Death in Prisons		
1.10.1		Policy and guidelines on deaths in prisons	<ul style="list-style-type: none"> • Adopt and implement policy directives and guidelines on the steps to be followed in an event of a death, such as calling for emergency medical assistance, securing the scene of death, separating prisoners who are suspects/witnesses from others and from each other etc., and all prison officers and prisoners to be made aware of these directives through training, public notices, drills etc. • Standardize the process of investigating a death in prison according to the Minnesota Protocol.

			<ul style="list-style-type: none"> • Compile a crime scene log by a prison officer, record the names of the people entering or leaving the death scene and the respective times, until the police take control of the scene. • Maintain a methodical and detailed recording of deaths by the prison in the log. • Record exact times of important events such as the time at which other prisoners in the vicinity became aware of the death, notified the officers of the death, officers reached the scene, the time the deceased/body was taken to the hospital etc. • Mention the exact place of death in the prisons' record if there is reasonable cause to believe the prisoner died in prison since such recording is crucial in identifying delays or gaps in the response of prison authorities and preventing such delays in the future.
1.10. 2		Adequate training on first aid for medical emergencies	<ul style="list-style-type: none"> • Provide staff who have routine contact with inmates with standard first aid and cardiopulmonary resuscitation training, as well as a programme on first aid training to prisoners, possibly in collaboration with the St. John Ambulance Brigade since at most times, officers might not be readily available to provide first aid.
1.10. 3		Formal mechanism for recording and accountability on deaths in prison	<ul style="list-style-type: none"> • Establish accountability mechanisms for prison officers who have failed to adhere to their duties resulting in the death of a prisoner by negligence and take disciplinary action against them. • Differentiate the types of deaths in the Annual Prison Statistics Report to facilitate the identification of patterns and trends.

			<ul style="list-style-type: none"> • Create awareness about the mandate and the investigative powers of the Human Rights Commission of Sri Lanka to prison staff to ensure the smooth conduct of any investigation by the Commission with all staff members providing maximum cooperation. • Include a special team of officers from the Department of Forensic Medicine and Toxicology in the protocol on investigating custodial deaths, and notify them immediately and summon to conduct an initial investigation of a death scene in order to preserve the scene and evidence before other investigating authorities take control of the investigation, to minimize the risk of evidence tampering by prison officers, or even prisoners.
1.10. 4	Procedures and mechanisms to deal with deaths due to violence in prison		<ul style="list-style-type: none"> • Maintain vigilance on prisoners who complain of pre-imprisonment violence and produce them before Judicial Medical Officers to provide necessary treatment and proceed legal action against perpetrators to prevent deaths from such violence prior to admission. • Take preventive action on violence among inmates by minimizing interaction between rival inmates and permit change of wards if requested due to threats, as well as take immediate action on such complaints. • Ensure prisoners are effectively segregated by adhering to the information on prisoner's background conveyed via confidential report to prison as per Crime Circular 19/2014 (IG Circular 2508/2014), including their membership in organised crime gang and relevant rivals.

			<ul style="list-style-type: none"> • Create awareness of the legal limitations on the use of force and instrument of restraint by prison officers and Superintendent of Prisons to take swift action on ill treatment, assault or other irregularities as per Section 15 of the Departmental Standing Orders of 1956. • Maintain records of ward transfers of deceased to identify responsible parties in the event of a death due to violence.
1.10. 5	Procedures and mechanisms to deal with deaths due to suicide in prison		<ul style="list-style-type: none"> • Ensure during the orientation programme that prisoners who are feeling overwhelmed are aware of available help and support through identified officers. • Implement mechanisms to identify prisoners who are at risk of committing suicide, such as an assessment of risk and screening for suicide during admission procedure and the initial medical examination. • Enable prison officers to conduct screening in the absence of qualified MOs, with a simple guideline including both static (historical and demographic) and dynamic (situational and personal) variables. • Transfer prisoners identified as at high risk of suicide upon admission to a medical facility where they can receive expert attention, or alter their detention conditions to facilitate observation, monitoring, and emotional support as they should not be kept alone without around the clock close observation. • Undertake routine checks to watch for indications of suicidal intent or mental illness, signs of which include, but are not limited to, sudden change in mood, eating habits or sleep, divestment such as giving away personal possessions, loss of

			<p>interest in activities or relationships, repeated refusal to take medication or a request for an increased dose of medication.</p> <ul style="list-style-type: none"> • Provide initial suicide prevention training followed by annual refresher course to all correctional staff, as well as health care and mental health personnel. • Record cases of suicide and identify the reasons while correctional and health staff should debrief each incident to reconstruct the events leading to the suicide, identify factors that may have led to the inmate's death that may have been missed or inadequately addressed, assess the adequacy of the emergency response and formulate policy to improve future prevention efforts including such measures as introducing specially trained inmate "buddies" or "listeners", as potential suicidal inmates may not want to confide in officers but will be open up to fellow inmates. • Introduce strategies to reduce the risk of contagious suicidal behaviour by providing secure psychiatric care for prisoners with psychiatric illness.
1.10. 6	Procedures and mechanisms to deal with deaths due to inadequate medical attention in the prison		<ul style="list-style-type: none"> • Conduct a comprehensive medical screening upon arrival to the prison. • Conduct regular medical check-ups of all the prisoners and allocate required resources. • Establish appropriate infrastructure for inpatients and outpatients. • Observe and report to the Medical Officer any signs of physical and mental ill health in prisoners without waiting for the prisoner to approach the Medical Officer.

			<ul style="list-style-type: none"> • Transfer to external medical care upon referral without delay or exception. • Develop a contingency plan for transferring prisoners who are suddenly taken ill, especially at night, with special attention paid to providing emergency medical assistance (ambulance services and/or paramedic services). • Handover prisoner's previous medical records upon transferring prisoners from one prison to another, to avoid delays in treatment of physical or particularly psychological illnesses, which could contribute to unnatural deaths, such as suicide.
1.10. 7		Procedures and mechanisms to deal with deaths due to accidents in the prison	<ul style="list-style-type: none"> • Implement recommendations to reduce deaths in prison due to work place accidents as set out under Chapters on Prison Work and Accommodation.
1.11	Challenges Faced by the Prisons Administration		
1.11. 1		Remuneration and work conditions of prison officers	<ul style="list-style-type: none"> • Create public awareness on the value of the work undertaken by prison officers and their services to the country to boost the self-esteem and feelings of self-worth of prison officers. • Allow mandatory days off to officers who complete multiple, subsequent shifts. • Revise the salary scales to reflect the complex and often dangerous nature of the work of prison staff at all levels and to match to those of other public officers as wells as officers in the criminal justice sector.

			<ul style="list-style-type: none"> • Provide prison staff added benefits in light of the isolated and geographically mobile nature of their job, such as access to free or subsidised housing, medical insurance, transport allowances, etc. which could compensate for low levels of pay as an interim measure. • Introduce recreational activities for prison officers by the Department of Prisons in collaboration with other state institutions and external stakeholders, such as indoor sports with the aim of reducing their work stress, taking into consideration the recommendations of the research conducted by the Ministry of Health on the burnout of prison officers. • Organize group activities, such as social gatherings and work meetings to discuss and solve work related issues, organizing sporting activities as well as trips for prison officers and their families. • Design and implement adequate counselling services and stress management mechanism to prison officers. • Provide opportunities and incentivise further educational qualifications.
1.11. 2		Recruitment policy and procedure for prison officers	<ul style="list-style-type: none"> • Revise recruitment policies and adhere to the strict recruitment and selection processes paying attention not only to applicants' professional qualifications but also their personal qualities, as this will determine how they handle and manage inmates. • Appoint the head of the Department of Prisons from amongst the staff in the correctional system, rather than an individual from outside the service since an internal officer would have a better grasp and insight of the challenges faced by the

			<p>prisoners and prison officers, which in turn would result in more responsive interventions and decisions that address existing needs and concerns.</p> <ul style="list-style-type: none"> Consider the use of psychometric tests for recruitment as well as to identify officers who are suitable to be promoted or require further training for improvement as stipulated in the Handbook on Anti-Corruption Measures in Prisons of UNODC, as tests are designed by professional psychologists and involve testing intelligence, aptitude and personality among other aspects.
1.11. 3	Training and development of prison staff		<ul style="list-style-type: none"> Provide prison staff with the proper understanding of their role in the prison as rehabilitative and not as punitive. Conduct training programmes for both hard and soft skills that are essential when dealing with offenders, technical skills such as the use of technology and documentation processes to ensure that they play a dynamic role in the management of prisons rather than a static one, and also include sessions in fundamental rights, human rights, Standard Minimum Rules, as well as the modern practices with regard to the treatment of prisoners and their rehabilitation. Provide training in the appropriate use of force to prevent abuse, torture and violence, including techniques of using minimum force to restrain and non-violent methods of handling inmates. Conduct biannual or annual training for prison guards who carry firearms on the use of weapons as well as the protocols to be followed when using firearms.

			<ul style="list-style-type: none"> Provide suicide prevention training that includes areas such as why correctional environments are conducive to suicidal behaviour, potential predisposing factors to suicide, high-risk suicide periods, warning signs and symptoms, components of the facility/agency's suicide prevention policy as well as mock drills.
1.11. 4	Vetting mechanism to prevent corruption among prison staff		<ul style="list-style-type: none"> Conduct background checks on candidates who have applied for vacancies in the prison system to avoid recruiting persons with a criminal record or a history of violence, or allegations of human rights violations during previous employment. Adopt methods in line with the recommendations in the Handbook on Anti-Corruption Measures in Prisons by the United Nations Office on Drugs and Crime to prevent conflicts of interest that may lead to corruption, such as the three r methods, i.e. register, restrict, and relinquish, by the Department of Prisons . Rotate staff when assigning duties as a mechanism to minimise room for corruption. Conduct in-depth background checks of new recruits as well as prison officers already recruited such as home visits, relatives and family ties, drug and alcohol tests, checking personal background and personal finances, as well as the use of polygraph tests, if such officers are assigned to high profile prisoners where there is a risk of the officers being negatively influenced by the prisoner, such as being bribed.
1.11. 5	Prison police		<ul style="list-style-type: none"> Formulate a legal framework setting out the duties and responsibilities of the prison police.

2. Enhance the Welfare of Prisoners

No.	Category	Areas of concern	Recommendations
2.1	Rehabilitation of Prisoners		
2.1.1	Education and vocational training programmes		<ul style="list-style-type: none"> • Develop a structured system of educational opportunities for prisoners in line with the different levels of education the prisoners possess. • Provide qualified educators, equipment and building facilities to foster a culture of education within the prison. • Provide vocational training in useful and income-generating trades according to the current needs of the market. • Make available a range of vocational training for prisoners to choose from. • Engage instructors consisting of permanent and additional part-time or voluntary instructors in every prison. • Expand the avenues to sell the products made by prisoners during vocational training, particularly to state entities.
2.1.2	Religious and cultural activities		<ul style="list-style-type: none"> • Provide equal opportunity, adequate and equal access to all prisoners who wish to engage in religious activities while respecting those who do not wish to participate in such practices. • Provide equal opportunities to participate in cultural and other festivities regardless of their ethnicity. • Facilitate the celebration of all religious festivals in prisons.
2.1.3	Engagement with the outside world		<ul style="list-style-type: none"> • Provide an adequate number of books and newspapers and means of being informed of current affairs such as TVs and radios. • Engage the community and other organisations to expand rehabilitation programmes to encourage interaction with the outside

			<p>world which would enable the successful social re-integration of prisoners.</p> <ul style="list-style-type: none"> • Invite well-known personalities and motivational speakers to address the prisoners.
2.1. 4	Other rehabilitation programmes		<ul style="list-style-type: none"> • Provide adequate sports and physical training equipment.
2.1. 5	Evaluations of rehabilitation programmes		<ul style="list-style-type: none"> • Provide equal opportunities in rehabilitation to female prisoners. • Monitor the effectiveness and the impact of rehabilitation programmes periodically.
2.1. 6	Individualized rehabilitation and release care plan		<ul style="list-style-type: none"> • Prepare a rehabilitation plan for each prisoner upon admission, after taking into consideration their social and criminal history, physical and mental capacities and aptitudes, personal temperament, the length of sentence and prospects after release. • Keep a record of the rehabilitation plan in the prisoner's personal file and evaluate progress periodically and make modifications when required. • Facilitate a prisoner's gradual social re-integration with the help of relevant NGOs and community organisations. • Implement a release care plan in a transitional/half-way house to provide assistance with food, shelter and employment for prisoners who do not have a home to return to.
2.1. 7	Administration of Rehabilitation and welfare		<ul style="list-style-type: none"> • Revamp the Department of Prisons to reflect rehabilitation as its main goal by providing sufficient cadre positions for rehabilitation officers and counselling officers. • Ensure the ratio of rehabilitation officers and uniformed officers to prisoners enables rehabilitation of prisoners as a top priority of the system.

			<ul style="list-style-type: none"> • Employ an adequate number of counsellors and Rehabilitation Officers to all prisons. • Provide essential support staff and resources to the Welfare Division. • Provide special training on rehabilitation to both uniformed and non-uniformed staff to make them aware of the aim of incarceration.
2.2	Prison Work		
2.2.1	Types and conditions of work		<ul style="list-style-type: none"> • Provide work that is useful in nature and under conditions that resemble the work conditions outside the prison, to enhance the self-esteem and the sense of responsibility in prisoners with consideration for applicability to post release employment. • Assign work with special attention to prisoner's existing skills, preferences and future plans and in line with the prisoner's individualized rehabilitation plan. • Avoid allocation of work party based on an inmate's social standing or preferential treatment to avoid inefficiency and distortion of the principle of benefits. • Allow changes in work party allocation where possible if it can be established that the assigned work is not the best fit for a particular prisoner. • Implement existing provisions that provide greater opportunities for reintegration, such as open prison camps and Work Release. • Expand the Work Release scheme to include opportunities to work in the private sector. • Collaborate with the private sector to initiate new ventures for prisoners to acquire marketable skills, benefit from earning higher wages commensurate with market rates, and have the prospect of being employed by the same enterprise upon release.

			<ul style="list-style-type: none"> • Ensure prisoners are not exploited for their labour in the private sector and have access to benefits and insurance, and enjoy the protection of labour laws with strict supervision by the Ministry of Justice and Prison Reforms and periodic reporting as well as a grievance mechanism. • Avoid employing prisoners in prison offices with access to confidential information on prisoners by digitizing information management system or recruiting more prison officers. • Increase access to post release support by providing a budget allocation for the provision of tools and equipment to released prisoners who successfully complete their vocational training courses in prison and wish to pursue relevant opportunities upon release.
2.2. 2	Equipment and personnel for work		<ul style="list-style-type: none"> • Provide funding to procure adequate industrial equipment, machinery and material to ensure maximum productivity, as well as safety of the prisoners at work. • Enlist qualified trainers/instructors in work parties, including specialized external entities to provide effective training to prisoners, from which they can benefit after their release.
2.2. 3	Health and safety		<ul style="list-style-type: none"> • Comply with the recommendations of Medical Officers on fitness for work. • Ensure prisoners undergo a medical evaluation prior to being transferred to an open camp and communicate to the receiving prison the Medical Officer's recommendation for type of work. • Visit and monitor prisoners at work by Medical Officers to identify those who find it difficult to work. • Renovate workshops and other working places to protect the health and safety of prisoners, and prioritize access to adequate supply of drinking water and sanitation facilities.

			<ul style="list-style-type: none"> • Provide training to every prisoner employed in a work party on work place safety. • Promote actively the use of safety equipment and display safety instructions in every work party. • Install first aid boxes in every work party and provide training in first aid and CPR to all prison officers, and offer similar training to prisoners incentivized as a positive indication of rehabilitation before the License Board. • Obtain necessary approval if working hours extend beyond the maximum number hours stipulated in legislation/regulation. • Provide sufficient rest intervals and rest days to prisoners, as per domestic legislation/regulation as well as international standards, to rest and engage in other rehabilitative aspects of prison life.
2.2. 4	Remuneration		<ul style="list-style-type: none"> • Revise the prisoners' wages scheme periodically to be in line with the present market costs of labour and match with the national minimum standard of wages. • Create awareness among prisoners of the existing remuneration schemes and their entitlements. • Provide the prisoners with the opportunity to utilize a part of their earnings for their benefit, i.e. to purchase necessary items in prison stores and/or to send a part of their earnings to the family. • Allow prisoners to examine their passbooks to view their current balance upon request, which will also increase the accountability of the prison administration.
2.3	Early Release		
2.3. 1	Policies and procedures		<ul style="list-style-type: none"> • Reconceptualize and strengthen the existing early release measures in the Sri Lankan penal system.

			<ul style="list-style-type: none"> • Review the evaluation system and address the weaknesses by devising a holistic system that can operate to review the prisoner's rehabilitation step-by-step. • Implement procedures to prevent delays with regard to Home Leave and License Board on the part of the HQ and Ministry of Justice and Prison Reforms. • Provide for rehabilitated prisoners to go on Home Leave even in the absence of a guardian or family, to be under the care of a recognized community organization or a half-way house. • Adopt a written and published policy document or guideline to assess the eligibility of persons to be released by the License Board, as well as the reasons for rejection, for transparency and accountability of the process. • Include individuals representing the interests of prisoners, such as human rights advocates, psychiatrists etc. in the License Board, to strengthen the fairness and integrity of the process. • Provide adequate resources and support with increased number of Rehabilitation officers in the Welfare Division of each prison to ensure the Home Leave and License Board procedures are efficient and devoid of delays and handled with correctional and rehabilitation objectives. • Explore methods of criminal justice administration to amend sentencing policies to take into account the elements of the crime as well as extenuating circumstances.
2.4	Prisoners on Death Row		
2.4.1		Policy on death penalty	<ul style="list-style-type: none"> • Propose to abolish the death penalty.

			<ul style="list-style-type: none"> • Commute all prisoners on death row to life imprisonment and thereafter to a specified term of imprisonment, after conducting individual evaluations of their rehabilitation in prison based on which they be made eligible for early release measures. • Address the physical and mental healthcare needs of prisoners on death row.
2.5	Prisoners held under the Prevention of Terrorism Act		
2.5.1	Procedures and guidelines for detention under the PTA		<ul style="list-style-type: none"> • Ensure that national security/ Anti-terror law complies with International Human Rights standards by repealing the PTA. • Ensure that safeguards are in place for a remandee to move from fiscal custody for interrogation by police under exceptional circumstances so that space is not created for the abuse of the inmate during such periods. • Ensure no exceptions are allowed to existing provisions of the Evidence Ordinance regarding confessions, in particular, the burden of proving that a confession was made under duress should not be on the defendant. • Produce every detainee arrested under national security laws before a Judicial Medical Officer within a specified time and submit the report of such examination to the Magistrate as a matter of course. • Review the cases of those indicted, and withdraw indictments which are based solely on a confession given to a police officer, and cases where no credible evidence exists. • Grant bail to detainees who have been in remand for an extended period of time.

2.6	Young Offenders		
2.6.1		Policy, Procedures and guidelines	<ul style="list-style-type: none"> • Use alternative non-custodial correctional methods for persons under eighteen years of age and not be held in prison and detain Young Offenders only in juvenile detention facilities if incarceration is used as a last resort. • Amend the legal framework to ensure a standard definition of a Young Offender across all statutes, and stipulate that offenders below the age of eighteen should not be held in adult prisons. • Enforce a zero-tolerance policy on violence and take strict disciplinary action, and criminal action where required and appropriate, against officers accused of assaulting Young Offenders. • Ensure that safeguards are in place for Young Offenders subjected to violence, to have access to a safe and secure grievance mechanism to lodge complaints. • Ensure Young Offenders are able to have regular communication with their family through telephone facilities and provide access to and assistance with legal representation. • Authorize the National Child Protection Authority (NCPA) to arrange and oversee the transfer of Young Offenders from the courts to juvenile facilities and not through the prison system or by prison officers.
2.6.2		Rehabilitation and Education	<ul style="list-style-type: none"> • Ensure all Young Offenders irrespective of gender, ethnicity, language proficiency, etc. have access to education and vocational training in places of detention. • Ensure the Young Offenders receive a comprehensive education. • Provide educational facilities at every institution where Young Offenders are held and be integrated with the national curriculum so

			<p>that Young Offender have the option of continuing their disrupted education, according to their personal levels of education and literacy.</p> <ul style="list-style-type: none"> • Introduce innovative and creative methods of inspiring Young Offenders to turn away from the path of criminal activities. • Provide Young Offenders with adequate access to psychological and counselling facilities which should be informed during their orientation upon admission to prison, and arrange weekly sessions with counsellors. • Offer programmes and workshops on self-esteem, managing emotions and the cultivation of healthy relationships.
2.6. 3	Human resources and personnel		<ul style="list-style-type: none"> • Recruit personnel with relevant and recognized qualifications in childcare and child psychology and are able to deal with behavioural issues, at all correctional facilities housing Young Offenders and provide a refresher and in-service training regularly. • Revise remuneration and allowances for such staff members adequately to attract qualified professionals.
2.7	Foreign Nationals in Prison		
2.7. 1	Policy, procedures and guidelines		<ul style="list-style-type: none"> • Ensure that foreign nationals do not suffer discrimination on the grounds of their nationality or language proficiency at any stage of the criminal justice procedure or incarceration, and Judicial Services Commission to consider introducing the policy of requiring judges to specifically inquire from foreign national detainees about their well-being in custody, as they do not have any contacts outside the prison who could protect their interests. • Inform the respective foreign missions without delay, at least within forty-eight hours when foreign nationals are arrested and admitted to prison, by Police and prison officers.

			<ul style="list-style-type: none"> • Allow foreign nationals to meet/speak with representatives from their embassies upon request following arrest, arranged by prison officers, since the embassy is the inmate's point of access to their national country and government. • Provide the services of an interpreter during police inquiry and trial without leading to any delays in the trial. • Provide foreign inmates the facility to call their families upon admission to prison and once a month in lieu of family visits, arranged with the assistance of their embassies. • Permit foreign inmates to have contact visits for a reasonable time period and multiple consecutive visits, when their family has travelled to Sri Lanka to visit them, especially if the inmate does not ordinarily receive any visits. • Arrange a service in all prisons for family members to wire transfer money to the prison canteen or stores to enable inmates to purchase provisions. • Provide foreign nationals a list of lawyers with their contact details and credentials, to choose legal representatives in collaboration with the Legal Aid Commission and/or Bar Association of Sri Lanka. • Provide foreign nationals upon admission to prison, an orientation booklet that is available in a range of languages, that includes information on admission, visits, complaint procedures etc., to enable them to understand the basic rules governing the prison. • Provide foreign nationals with periodic supply of basic necessary provisions.
2.7. 2	Repatriation		<ul style="list-style-type: none"> • Repatriate eligible and consenting foreign national prisoners swiftly by the Ministry of Justice and Prison Reforms as everyone has the right to return to his/her own country, and repatriation procedures

			<p>should not be subject to political whims, but should be implemented as a matter of course as part of an established procedure.</p> <ul style="list-style-type: none"> Initiate the procedure to transfer a foreign prisoner wishing to return as soon as the prisoner is convicted, unless there are legitimate reasons for non-transfer, thereby requiring the foreign prisoner to spend the minimal amount of time in the host prison. Revise the current process of sending persons who have completed their sentence to the Foreign Nationals Holding Centre in Mirihana where they would be subject to indeterminate deprivation of liberty in an overcrowded and ill-equipped facility, and to minimize the time taken by authorities to complete the administrative protocol of repatriating an individual.
2.8	Women		
2.8.1	Medical and healthcare facilities		<ul style="list-style-type: none"> Ensure that female prisoners have access to a separate, fully equipped medical facility within their respective section in each prison, with the opportunity to consult a female Medical Officer, if they wish. Ensure that quarantined spaces are available inside female healthcare sections for patients who need to be separated due to a medical condition. Formulate a comprehensive programme to treat substance dependency amongst female prisoners, with the progress of the inmates being monitored regularly. Provide psychological services, bearing in mind the higher rate of female victims of domestic violence, physical and sexual abuse as identified in the Bangkok Rules for women in incarceration. Ensure that there is an efficient system for women [convicted and remandee women who receive no visits] to receive sanitary napkins once a month.

			<ul style="list-style-type: none"> • Ensure that there is an efficient system to dispose sanitary napkins and pads regularly and instruct inmates on how to dispose and how to handle such waste in a hygienic manner. • Expand the scope of preventive healthcare – make breast and cervical cancer screenings available to prisoners, as well as regular awareness programmes relating to breast and cervical cancer. • Make provisions for effective ante-natal and post-natal care facilities for pregnant women or mothers who recently gave birth regularly, arrange special meal plans and access to awareness programmes on how to look after the new-born child. • Consider expanding the use of non-custodial measures as alternatives to incarceration for women who are primary caregivers for children under their care and pregnant women, to prevent disrupting the lives of their children and minimize the burden created on the state to place such children in state childcare centres.
2.8. 2	Rehabilitation		<ul style="list-style-type: none"> • Engage women in meaningful prison work that is not limited to cleaning and provide equal opportunities to participate in Work Release Schemes and private ventures in prison, subject to the guarantee of human rights compliant work conditions. • Formulate a comprehensive programme that gives women access to a wider array of vocational training and educational activities to enhance their skills with access to external instructors, and the opportunity to receive a professional certification at the end of their training. • Allocate spaces inside the prisons as places of worship equipped with necessary facilities.
2.8. 3	Childcare		<ul style="list-style-type: none"> • Make provision for effective childcare facilities including: the service of paediatricians in prisons, appropriate meals to children, nurseries

			<p>or separate spaces to house children and ensure they are well maintained, play areas and tools required for learning, formulating a proper curriculum and a syllabus for students until the age of five, and the services of certified nursery teachers.</p> <ul style="list-style-type: none"> • Expand the pre-school system at WCP to all prisons in the system.
2.8. 4	Female prison personnel		<ul style="list-style-type: none"> • Issue a circular specifying the procedure to be adhered to when conducting body searches and inform all prison officers and the prison police in writing that only a female doctor is authorized to conduct a manual body cavity search on a female inmate. • Recruit more female officers to the prison service and ensure they receive the training required to discharge their duties efficiently.
2.9	Prisoners with Disabilities		
2.9. 1	Facilities		<ul style="list-style-type: none"> • Renovate all prisons in line with international standards to make them disability accessible including toilet facilities. • Prioritize the needs of persons with disabilities and elderly prisoners, particularly medical treatment, for their disability and age specific illnesses as required. • Provide financial resources to enable the prison administration to secure aids and instruments for prisoners with disabilities, without being dependent on donations from external entities. • Establish a suitable housing mechanism for disabled prisoners, who must not be housed separately from other prisoners with necessary assistance available at all times. • Formulate a clear protocol for the evacuation of elderly and disabled prisoners in case of an emergency or disaster.

			<ul style="list-style-type: none"> • Rehabilitative programmes and activities should be designed so they are accessible to prisoners with disabilities to ensure they have the opportunity to spend their time in prison in a productive manner.
2.9. 2		Welfare and rehabilitative programmes	<ul style="list-style-type: none"> • Encourage Home Leave for disabled and elderly prisoners, particularly where such prisoners have family willing to care for them. • Modify Home Leave regulations and age should be made a factor that is taken into account when determining release, which could be done by undertaking age-related risk evaluations. • Utilize compassionate release for prisoners suffering full or partial paralysis and terminal illnesses and consistently by the Ministry of Justice and Prison Reforms in collaboration with the Ministry of Health. • Undertake effective supervision by training staff of prisoners with disabilities to prevent abuse and ill treatment by other prisoners.

3. Reform the Criminal Justice System

No.	Category	Areas of concern	Recommendations
3.1	Arrest and Detention		
3.1.1		Procedures in arrests	<ul style="list-style-type: none"> • Require police officers to follow the due process standards outlined in the Code of Criminal Procedure Act No 15 Of 1979 and initiate disciplinary action against officers who are found to have violated these provisions. • Develop legal procedures for arresting foreign nationals including provisions to contact their embassy and families as soon as arrest takes place. • Enforce a zero-tolerance policy of violence, and conduct that amounts to torture, inhuman degrading treatment and punishment. • Provide training to police officers in the use of force in accordance with international human rights standards of necessity and proportionality. • Ensure the safeguards outlined in directives are followed when persons are arrested and detained under the Prevention of Terrorism Act No. 48 of 1979 and establish procedures to trace and initiate disciplinary action against officers who have not abided by such directives.
3.1.2		Procedures in detention	<ul style="list-style-type: none"> • Prohibit incommunicado detention and provide detainees access to contact with family, legal representatives and independent organizations to minimize the risk of the detainee being subject to torture during custody. • Prohibit administrative detention and allow only a judicial officer to decide on any extension of detention as well as monitor detention.

3.1.3		Women detainees	<ul style="list-style-type: none"> • Provide guidelines for body searches of women suspects conducted by the police in the Code of Criminal Procedure Act No 15 Of 1979. • Amend the Code of Criminal Procedure Act No 15 of 1979 to include a provision that makes the presence of a Woman Police Constable mandatory when a woman is arrested and transported in order to safeguard the dignity and personal security of such women. • Ensure women who are detained overnight are kept in the presence of a Woman Police Constable so that a law enforcement officer is responsible and accountable. • Provide special facilities for arrested pregnant women and nursing mothers for their health and well-being.
3.2	Access to Legal Representation		
3.2.1		Legal aid system	<ul style="list-style-type: none"> • Strengthen the legal aid system through increased budgetary allocations for the Legal Aid Commission to enable them to increase their cadre and conduct legal aid clinics in prisons in rural areas. • Increase the salary scales for the officers of the Legal Aid Commission to enable the Commission to recruit experienced officers. • Allocate mandatory hours of pro bono legal work per annum for all Attorneys-at-Law/legal apprentices, and monitored by the Bar Association of Sri Lanka or the Judicial Services Commission to improve access to legal aid. • Enable prisoners to complain about lawyer malpractice directly to the Supreme Court. • Improve remuneration provided for state appointed lawyers.
3.2.2		Access to legal representation	<ul style="list-style-type: none"> • Provide the names, contact details and credentials of criminal lawyers to prisoners, especially foreign nationals, by the prison

			<p>administration, to improve the access of remandees to legal representation.</p> <ul style="list-style-type: none"> • Provide telephone booth facilities at all prisons, especially for remandees who need to contact legal representatives. • Allow suspects to contact legal advisors or legal aid representatives from the police station. • Decentralize the Court of Appeal to enable cases to be heard in the provinces as well to make the process of appeal accessible to those outside Colombo, and reduce the cost of appeals and hence increase accessibility.
3.3	Legal and Judicial Proceedings		
3.3.1		Bail and bail conditions	<ul style="list-style-type: none"> • Issue guidelines to enable the setting of reasonable bail conditions made on a case by case basis, in accordance with the provisions of the Bail Act to ensure the award of bail is the rule rather than an exception. • Require the reason to be provided for the refusal of bail/extension of remand in writing. • Ensure adherence to the provisions of the Release of Remand Prisoners Act to release inmates who cannot furnish bail conditions and require Magistrates to visit prisons in order to do the same. • Allow persons who cannot afford fines to pay them in installments, instead of imprisoning them.
3.3.2		Delays in judicial proceedings	<ul style="list-style-type: none"> • Conduct a study of judicial proceedings at the Magistrate Court to understand the causes of delays and propose solutions. • Conduct an internal review by the Attorney General's Department to ascertain the reasons for delays within the Department and devise

			solutions such as digitalization of the case management system to track the processing of files and hold officers accountable.
3.3.3		Legal assistance and other support in courts and judicial proceedings	<ul style="list-style-type: none"> • Strengthen legal assistance to ensure equal access to legal representation for prisoners and the Department of Prisons to seek the assistance of voluntary organizations in this regard. • Recruit adequate translators to address the failures of inmates to understand court proceedings as a result of lack of language proficiency. • Provide support to the courts so that defendants have the opportunity to place their concerns to the Judges of the Courts to ensure equal access to justice in the context of their heavy case load. • Allocate adequate funding and resources so that the Department of Prisons is able to acquire more vehicles and personnel to alleviate hardships faced by prisoners during transfer and establish a transfer protocol to provide prisoners with meals at appropriate times and access to toilet facilities at reasonable hours, particularly when they have to travel long distances. • Allow defendants to be seated in a demarcated area in the Magistrate Court, rather than being held inside a cell.
3.4	Continuum of Violence		
3.4.1		Policy and guidelines on prevention of violence in the criminal justice process	<ul style="list-style-type: none"> • Implement a zero-tolerance policy on violence within the criminal justice process and conduct inquiries by both internal and external entities into allegations of violence against prison and police officers and take strict action. • Initiate action under the Convention Against Torture Act against officers where there is adequate evidence.

			<ul style="list-style-type: none"> • Exercise strict judicial oversight to curb custodial violence when a person is produced before a judicial officer and through magisterial visits to prisons. • Consider introducing a policy by the Judicial Services Commission whereby judges are required to ask all persons produced in court whether they were assaulted in custody. • Provide a secure and confidential avenue to inmates to lodge complaints of assault, including to external entities such as the Human Rights Commission. • Provide prison officers training on non-violent methods of maintaining order and discipline. • Provide police officers training by the Police Department in conducting arrests and collecting evidence without the use of unlawful force. • Raise awareness amongst prison and police officers about the consequences of assaulting a prisoner and the punishment that can be imposed under the Convention Against Torture Act.
3.5	Non-custodial Measures		
3.5.1		Alternatives to imprisonment	<ul style="list-style-type: none"> • Revise and modernize penal policies and legislation to give priority to non-custodial measures. • Encourage Judicial officers to prioritize alternatives to imprisonment, such as Community Based Corrections Act No 46 Of 1999, drug rehabilitation and probation, where non-custodial measures are provided for under the specific related provisions of law. • Release the guidelines and criteria to assist judges in devising Community Based Corrections Act No 46 Of 1999 orders and

		<p>Judicial Services Commission in collaboration with Department of Community Based Corrections Act No 46 Of 1999 to ensure conditions stipulated for non-custodial measures are not so stringent for offenders that they fail and result in incarceration.</p> <ul style="list-style-type: none"> • Avoid incarceration of persons with severe mental and physical disabilities and the use of non-custodial measures is extended to persons whose physical and mental health would be exacerbated in prison, persons who cannot pay fines and Young Offenders, elderly prisoners and drug dependent persons who require rehabilitation. • Divert offenders mentioned above, out of the criminal justice system and into the non-custodial and rehabilitative system by the Police and prosecuting authorities. • Provide the Police with training on methods of identifying and differentiating between drug dependent persons, who need to be directed to treatment, and drug traffickers who need to be prosecuted. • Strengthen the Department of Community Based Corrections Act No 46 Of 1999 by revising its cadre, increasing the number of Community Based Corrections Act No 46 Of 1999 officers, and allocate the required financial resources for the recruitment of additional cadre, as well as administrative and logistical facilities. • Increase awareness on Community Based Corrections Act No 46 Of 1999and its important role in rehabilitation and restoration in order to reach communities and enable offenders to fully understand how Community Based Corrections Act No 46 Of 1999 is different from imprisonment.
--	--	--

		<ul style="list-style-type: none"> • Establish a separate national entity to implement probation for adult offenders and monitor their adherence to the conditions of their probation. • Communicate to Judicial officers and legal practitioners the possible use of the Probation of Offenders Ordinance as an alternative to imprisonment. • Encourage courts to be gender sensitive and take into account the particular circumstances of women incarcerated in the Sri Lankan penal system, who are caught in a cycle of poverty, domestic violence and criminal behaviour. • Promote Community Based Corrections Act No 46 Of 1999 for primary caregivers and sole breadwinners to break the cycle and ensure their children are not drawn into it. • Remove compulsory treatment for drug dependence from the law as mandatory drug rehabilitation centres and detention are in contravention of human rights standards against arbitrary detention and do not comply with international standards for human rights-compliance in healthcare, and strictly avoid overriding the individual's autonomy by subjecting treatment and rehabilitation to full and informed consent of the individual concerned. • Consider breaches of the law by those who use drugs or are in possession of drug for personal use as non-violent crimes and address through non-custodial measures as much as possible. • Treat substance dependency as a public health issue with concerned persons provided access to treatment, counselling and where required temporary shelter, with their full informed consent and voluntary participation. The government should
--	--	---

			<p>invest in community-based alternatives for treatment as well as approaches to treatment that are supported by science, such as harm reduction programmes, which would encourage persons who require drug dependency treatment to have different options.</p> <ul style="list-style-type: none">• Remove the NDDCB from the purview of the Ministry of Defence and place it within the purview of the Ministry of Health in line with adopting a public health approach to drug prevention and control rather than a law and order approach.
--	--	--	--

31. Postscript: Follow-Up

During the months following the commencement of the prison visits, an extensive follow up plan was devised as the team began to have a better grasp of the needs and concerns of prisoners and the workings of the DOP. For instance, the issuance of complaint forms was not envisaged as part of the original methodology, and the Prison Study team would simply note the complaints and concerns regarding which the prisoners requested the Commission's intervention. As the number of prisoners who wish to speak to the Commission increased, the team responded by increasing the number of days spent in a prison – with one day solely devoted to accepting and writing down complaints. The size of the team visiting the prison also increased to meet the demand.

HRC Complaint Forms, in all three languages, were issued to prisoners who were able to write themselves, while assistance was offered to those who could not. Complaints received were signed and dated, and complainants were also requested to provide contact details of family members or friends.

Complaints received from each prison were categorized and registered by the Inquiries and Investigations Division of the Commission, with complaints alleging torture in police or prison custody and requests for urgent medical treatment given priority. When an inmate reported assault, a full statement was obtained and any visible marks of injury were photographed. In instances the statement or complaint received did not contain the required detail, officers of the Commission would conduct another visit to the prison in order to collect the remainder of information.

In the case of alleged assault by police or prison officers, a letter requesting the prison to produce the inmate before a JMO within forty-eight hours would be presented to the SP on the spot, or the very next day. Thereafter, the Commission conducted inquiries into the complaints.

Requests for urgent medical treatment would be compiled and the list sent to the SP following the end of the visit to the prison. Towards, the latter part of the study, requests for urgent medical treatment were also submitted to the SP immediately in instances a prisoner affirmed he was suffering severe symptoms, and had not been sent for multiple clinic dates, despite the doctor's note requiring him to be sent for treatment.

Complaints related to general treatment and conditions of prisoners were compiled and the SP of the respective prison was called to the Commission for a meeting, chaired by the Commissioner overseeing the study to discuss the complaints. The meetings were intended to provide an opportunity to the prison authorities to respond to the complaints and provide explanations and clarifications regarding the issues raised by the Commission. At this meeting prison authorities also pointed to the structural and systemic factors that prevent them from addressing some concerns related to the conditions of prisons.

General conditions of the prison, which required long-term solutions, as well as specific and minor complaints, which the SP could resolve easily were discussed at the meeting. The minutes of the meeting, detailing the outcome of the meeting and any recommended action were sent to the SP the week following the meeting.

Complaints, which could not be resolved as they were not within the mandate of the Human Rights Commission, were frequently received from prisoners. Such complaints, such as requests to find legal assistance, for instance, were forwarded to the LAC or local NGOs and legal professionals willing to accept pro bono cases. Complaints and allegations against the police were forwarded to the NPC. Following multiple requests, the Commission began distributing contact details of the LAC and NPC, along with contact information of the Commission.

A follow up visit would be conducted to inspect any steps taken by the prison administration as a consequence of the prison visits, and the meeting with the SP of the relevant prison. Meetings were conducted with SPs of eight prisons of the sample of institutions. A meeting was also conducted with the three SPs of the Colombo prisons (NMRP, CRP and WCP) with relevant medical personnel from the MOH and the WCP PH to discuss the challenges faced by the prisoners in accessing medical treatment, in particular the long waiting list of prisoners to be transferred to hospitals and clinics.

32. Conclusion

The Human Rights Commission's Study of Prisons has highlighted the shortcomings in every key aspect of the existing correctional system, with the failure to adhere to minimum standards on the treatment and conditions of prisoners, to which they are entitled under national and international human rights standards, prevents the incarceration system from fulfilling its ultimate purpose, the prevention of crime.

The living conditions of prisoners not only fail to adhere to the basic standards stipulated in national and international laws, but also subject the prisoners to degrading and inhuman treatment. This is exacerbated by the overcrowding of prisons due to multiple factors, including bail being an exception rather than the norm, and persons being incarcerated for minor offences for which they could be directed to community corrections. Due to the overcrowding existing meagre facilities have to be distributed among a prisoner population that is manifold the capacity of prisons, which has an adverse impact on the provision of basic services to prisoners, including health care. This in turn has a harmful impact on the mental and physical health of prisoners.

Short-staffed prison administrations are not able to meet the demands of effective correctional care, and instead, the impact of challenging work conditions causes officers to lose job satisfaction and experience mental distress. In this regard, the welfare of prison officers requires particular attention, since their remuneration and benefits do not reflect the stressful and dangerous nature of their work, nor are they provided support mechanisms to deal with the psychological impact of their work. The lack of training, particularly on non-violent means of addressing order and disciplinary issues in prison, and human rights, and the lack of human and other resources, such as modern technological equipment, exacerbate the challenges faced in administering the correctional system in a humane manner within a human rights framework. Thus, the prison system as it currently exists arguably does more harm than good and needs to be restructured along with the required legal and policy reform, in order to fulfil its true purpose.

At the same time, the shortcomings that have been unearthed point to larger systemic and structural shortcomings in the system, which require legal and procedural changes as well as increased financial and human resource allocation. While there are a number of issues that can be addressed directly by the Department of Prisons, given the impact of a number of institutions and processes on the administration of prisons, issues such as overcrowding cannot be resolved by the Department of Prisons alone as illustrated by this report. Findings of the study revealed inter-connecting factors that require simultaneous reform to effect. For instance, key reform in the criminal justice process, from the point of arrest and detention to the functioning of Magistrate Courts where the award of bail is first decided, and the delays in the trial process which can even last for up to twenty years, is required to transform the incarceration process into an effective rehabilitation and correctional care system. The provision of legal aid and increased use of non-custodial alternatives are some of the core areas that need to be strengthened to improve the administration of justice.

To reform the existing correctional system, it must be acknowledged that the system is not progressive in terms of the philosophy, policy and procedures upon which it functions. As reiterated throughout the report, the philosophy of the penal system needs to evolve into one with a correctional and rehabilitative focus, rather than a solely punitive purpose. Moreover, attention should be paid to ensuring that the period of incarceration enables the person to successfully integrate socially and economically post-release and live a dignified life, if the purpose of the system, i.e. prevention of crime and the creation of a society that respects the rule of law, is to be realized.

It is hoped that this report will be used by the relevant Ministries and stakeholders to understand the status quo and will enable them to formulate progressive policies for reform. Any action to reform the criminal justice and correctional process should be undertaken bearing in mind that all citizens, despite their conduct or crime committed, are entitled to be treated with dignity.

33. Acknowledgments

The Commission would like to acknowledge its appreciation for the support and assistance provided by the following individuals and institutions, without whom this study would not have been possible.

The Commission would like to extend its gratitude to the then Commissioner General of Prisons Mr. T.M.J.W.Thennakoon and the Prisons Commissioners Mr. K.D.B. Jayasinghe, Mr. E.M.J.C.L.B. Ekanayake, Mr. G.M.P. Liyanage, Mr. H.M.T.N. Upuldeniya, Mr. J.A.G. Jayasinghe, Mr. K.A.K.S.N.K. Kaluarachchi, Mr. K.D.B. Jayasinghe, Mr. K.K.S.U. Ranjan, Mr. M. Venura Gunawardhana for their continued support and cooperation provided to the Commission.

The Commission would also like to thank the Superintendents of Prisons, Assistant Superintendents and Chief Jailors for their support and assistance during prison visits undertaken during this study as well as their insights into challenges and suggestions for reform.

1. Mr. A.D.S. Samaraweera
2. Mr. A.W.S. Dhammadika
3. Mr. B.M.U.G.A.K. Basnayake
4. Mr. B.M.U.G.A.K. Basnayake
5. Mr. E.W.J. Nimal Edirisinghe
6. (Late) Mr. H.A.C. Perera
7. Mr. H.D. Ranjith Jayaweera de Silva
8. Mr. H.G. Nadeesh Tharanga
9. Mr. H.M. Subash Nilanga Upuldeniya
10. Mr. H.M.V. Sarath Bandara
11. Mr. J.C. Weerasinghe
12. Mr. K. L. R. Kodikara
13. Mr. K.A.S. Kodithuwakku
14. Mr. K.A.S. Kodithuwakku
15. Mr. K.B.A Udaya Kumara
16. Mr. K.U.H. Akbar
17. Mr. L.G. Sudath Rohana
18. Mr. L.J.M.K. Bandara
19. Mr. L.J.M.K. Bandara
20. Mr. M. S. Mohan Karunaratne
21. Mr. Mangala Welivitiya
22. Mr. N. Prabaharan
23. Mr. P. Vajira Abeydeera
24. Mr. P.G.S.C. Pathanegedara
25. Mr. R. Prasad Hemantha Kumara
26. Mr. R.G.S.L. Gunasekara
27. Mr. R.H. Ranjith Premalal
28. Mr. R.M.S. Bandara
29. Mr. R.P.H. Kumara
30. Mr. R.S. Alahakoon
31. Mr. R.S. Mahanama
32. Mr. R.W.W.U.D.A. Sampayo
33. Mr. S. Hanisdeen
34. Mr. S.K. Pallethenna
35. Mr. S.R. Galappaththi
36. (Late) Mr. S.V.H. Priyankara
37. Mr. T.I. Uduwara
38. Mr. U.G.W. Tennakoon
39. Mr. V.R. Prabath
40. Mr. W. Prasad Premathilaka
41. Mr. W. Wasantha Depp
42. Mr. W.A.D.C. Karunasekara
43. Mr. W.G.N. Fernando
44. Mr. W.L.M.F. Lowe
45. Mr. W.M. Jeewaka Indrajith Fernando

The Commission would like to extend its heartfelt gratitude to prison officers, rehabilitation officers and other staff members of all the prisons visited by the Commission, as well as those stationed at the Prisons Headquarters for facilitating the inspections, tirelessly escorting the Prison Study Team, swiftly and patiently responding to multiple queries and requests for further information, as well as their insight into the needs and shortcomings of the prison system.

The Commission would especially like to thank the former Commissioner General of Prisons, Mr. H. M. N. C Dhanasinghe, for his unstinting support and cooperation during the prison study.

Stakeholder interviewees who devoted their time and expertise for the purposes of this study and contributed to the recommendations of the Commission.

Mr. H. G. Dharmadasa, for taking the time to speak to members of the Commission and providing insight into the correctional system and sharing his experiences as Commissioner General. The Commission would also like to acknowledge the assistance of former Commissioner of Prisons Mr. M.P. Saratchandra in providing difficult to obtain material to the Commission.

Dr. Pradeep Peiris, for the advice and assistance provided and patience shown towards the research team during the formulation of the methodology, including evaluating quantitative data, as well as the team at PepperCube Consultants for undertaking the analysis of the quantitative data.

Dr. Gameela Samarasinghe and Dr. Mahesan Ganesan for providing advice on the psychological aspects that had to be taken into account when undertaking the study, both in relation to the interviewees, especially the prisoners, and the prison team at the planning and design stage of the study.

The team of researchers for their hard work and dedication in performing their duties, including conducting prison visits, administering questionnaires and interviews, transcribing interviews, translating documents and drafting chapters of the report.

- | | | |
|-------------------------|--------------------------|----------------------|
| 1. Aadhes Thureraja | 7. Githmi Wijenarayana | 13. Kaushalya |
| 2. Aadil Nathani | 8. Hansinee Mendis | Ariyathilaka |
| 3. Anjalee Karunaratne | 9. Hansini Pallegama | 14. Lasanth Nadaraja |
| 4. Aravindi Weerasinghe | 10. Hiran Geeganage | 15. Madri de Silva |
| 5. Dhanuri Ariyananda | 11. Joshua Moraes | 16. Mohamed Ilham |
| 6. Dhanushan Arumugam | 12. Kalpanee Dissanayake | Hassanali |

17. Mohamed	21. Nishadi Gunatilake	28. Shalanka
Najumudeen Noorul	22. Oshini Perera	Weerasinghe
Shifa	23. Prabodi Bandara	29. Supriya Ramanathan
18. Moujooth Shilmiya	24. Randima Jayasekara	30. Sunthararaj Fredrick
Faroon	25. Rhaya Page	Winslaw
19. Nasikethan	26. Sashi Windsor	31. Tarini Wijesekera
Padmanaban	27. Sashya Karunakalage	32. Usha Ratnam
20. Nida Admani		

The Commission would like to acknowledge the time and efforts of Dr. Sepalika Welikala's review of the final report and the organizing of the recommendations.

The Commission would like to acknowledge the efforts and commitment of Mr. Asvajit Boyle and the team at Fold Media Collective in designing and typesetting the print version of the full report to be published.

The Commission would like to acknowledge the hard work by Sajida Fazal for finalizing this document for publication and designing the cover page.

The Commission would like to express its gratitude to the United Nations Development Programme (UNDP), United Nations Volunteers Sri Lanka (UNV), United Nations Peacebuilding Fund (PBF), European Union Catalytic Support to Peacebuilding in Sri Lanka Fund and Royal Norwegian Embassy (RNE) for the financial support provided to the Study.

The Commission notes with appreciation the contribution of Commissioner Ambika Satkunanathan who led, conceptualized and managed the study, including editing the report.

Above all, the Human Rights Commission would like to thank the prisoners that contributed to the study, by sharing their experience of the criminal justice system with the Commission and trusting the Prison Study team with details of their stories despite the potential risks it created to their own wellbeing.

34. Annexes

7. Accommodation

- Annex 7.1. - Floor space

8. Food

- Annex 8.1. – Categories of vegetables - DSO 1956 s.517 (page 66).
- Annex 8.2. – Dietary scales - SR schedule 1 (page 853, 854).
- Annex 8.3. – Diet distribution as per dietary scales “A” and “B” - DSO s.511 (page 63,64,65).

16. Rehabilitation of Prisoners

- Annex 16.1. - The complete daily schedule of the drug rehabilitation programme in WWC.
- Annex 16.2. - Daily Performance Sheet to evaluate the progress of each prisoner during the drug rehabilitation programme in WWC, which is overseen by an officer from NDDCB.

17. Prison Work

- Annex 17.1. - Circular No. 64/1982 titled ‘Wages Scheme for the Industrial, Agricultural and Domestic Services in Prisons, Borstal and OPCs’.
- Annex 17.2. – Remuneration for Open Prison Camps/Work Camp.

18. Early Release Measures

- Annex 18.1. - Application for Home Leave (As per Circular No. 05/2012).

19. Prisoners on Death Row

- Annex 19.1. – List of offences that carry the death penalty in Sri Lankan legislation.

7. Accommodation

Annex 7.1.: Floor space per person in some prisons visited by the Commission

1. ACP – Number of prisoners in each ward as at 19 June 2018, the day of the Commission’s inspection of the prison.

ACP - Space allocation per person in a ward						
Name of the Ward	No. of Inmates	No. of Toilets	Space Occupied by Toilets (m ²)	Floor Space (m ²)	Space Occupied by Inmates (m ²)	Space per Person (m ²)
Y1	17	8	19.44	45.41	25.97	1.53
Y3	9	8	19.44	47.22	27.78	3.09
Y4	7	4	12.77	26.73	13.96	1.99
A1	28	5	14.25	137.15	122.90	4.39
A2	42	5	14.25	137.15	122.90	2.93
B1	8	5	4.83	138.48	133.65	16.71
B2	18	5	7.83	138.48	130.65	7.26
C1	44	5	4.83	138.48	133.65	3.04
C2	40	5	7.83	138.48	130.65	3.27
C3	34	6	14.25	138.48	124.23	3.65
C4	38	6	14.25	138.48	124.23	3.27
EA	22	5	14.25	137.15	122.90	5.59
EB	34	5	14.25	137.15	122.90	3.61
EC	31	6	14.25	137.15	122.90	3.96
ED	28	6	14.25	137.15	122.90	4.39
D1	62	5	14.25	137.15	122.90	1.98
D2	26	5	14.25	137.15	122.90	4.73
D3	34	6	14.25	137.15	122.90	3.61
D4	20	6	14.25	137.15	122.90	6.15
Female 1	19	4	11.29	40.69	29.40	1.55
Female 2	10	4	11.29	53.28	41.99	4.20

ACP - Space allocation per person in a ward							
Cell	No. of Inmates	No. of Cells	No. of Toilets	Space Occupied by Toilets (m ²)	Floor Space (m ²)	Space Occupied by Inmates (m ²)	Space per Person (m ²)
Y2	5	4	4	8.89	20.35	11.46	2.29
FA	10	10	10	21.6	50.88	29.28	2.93
FB	12	10	10	21.6	50.88	29.28	2.44

2. AOPC - Number of prisoners in each ward as at 5 July 2018, the day of the Commission's inspection of the prison

Ward	No. of Inmates	No. of Toilets	Space Occupied by Toilets (sq. ft.)	No. of Tanks	Space Occupied by Tanks (Sq. Ft.)	Floor Space (sq. ft.)	Space Occupied by Inmates (sq. ft.)	Space per Person (sq. ft.)
Tissa	41	4	44.388	1	9.48	1229.25	1175.38	28.66785
Wijeya - I	20	2	39	1	14.8	990	936.20	46.81
Wijeya - II	19	2	39	1	14.8	990	936.20	49.27368
Gemunu	12	1	19.8	1	10.2	678.15	648.15	54.0125

3. ARP - Number of prisoners in each ward as at 8 July 2018, the day of the Commission's inspection of the prison

ARP - Space allocation per person in a ward										
Building Name	No. of Inmate s	No. of Cell s	No. of Toilet s	Space Occupie d by Toilets (sq. ft.)	No. of Tank s	Space Occupie d by Tanks (sq. ft.)	Corridor Measure -mints (sq. ft.)	Floor Space (sq. ft.)	Space Occupie d by Inmates (sq. ft.)	Space per Perso n (sq. ft.)
PTA (MAX)	12	10	0	0.00	0	0.00	0.00	640.00	640.00	53.33
B1 Section	43	21	0	0.00	0	0.00	0.00	870.28	870.28	20.24
E1 Section	38	9	0	0.00	0	0.00	0.00	166.05	166.05	4.37
C Special (YO)	23	4	0	0.00	0	0.00	0.00	208.00	208.00	9.04
H1 Section	43	11	0	0.00	0	0.00	0.00	969.21	969.21	22.54
F Special Section	14	10	0	0.00	0	0.00	0.00	583.02	583.02	41.64
B2 Section	123		6	85.68	2	28.47	365.21	1788.85	1309.49	10.65
E2 Section	62		3	46.50	0	0.00	0.00	1180.40	1133.90	18.29
C Section	26		2	21.16	1	5.20	0.00	479.60	453.24	17.43
H2 Section	72		4	54.00	1	8.12	0.00	1276.86	1214.74	16.87
G Section	66		2	47.58	1	6.66	0.00	990.00	935.76	14.18
D Section	43		3	66.60	1	24.26	0.00	1347.79	1256.92	29.23
Female Remand Section	12		1	13.52	0	0.00	0.00	526.50	512.98	42.75
Female Convicted Section	3		1	16.74	0	0.00	0.00	273.76	257.02	85.67

Female Remand Section cell	0	4	0	0.00	0	0.00	0.00	215.04	215.04	N/A
PH Remand Section	4		2	36.18	0	0.00	0.00	241.42	205.24	51.31
PH Convicted Section	4		1	12.78	0	0.00	0.00	322.83	310.05	77.51

*In B1 Section, twenty-one cells inside and one cell outside. The bathing area and toilets are separate. The outside cell is said to be used for isolation. It was evident that it was originally constructed as a toilet. It has space only for one person. This outside cell was disregarded when calculating floor space.

*In E1 Section, nine cells with five to six people in each cell. There are two types of cells - six rectangular cells and three square-shaped cells. The total floor space measurement was taken and used for calculations, because on the inspection day inmate count was taken only of the whole ward, not of each cell.

*In C Special (YO) ward, four cells with six people in each cell. Some inmates sleep in the corridor due to the lack of space. Cells are too small, inadequate for six persons.

*In H1 Section, there were eleven cells, with five to six people in each cell.

*In F Special Section, there were ten cells. One or three inmates in each cell.

*In B2 Section, there were two separate cells outside the ward. One of the outside cells is used as storage area and the other is used by the kamara party and another inmate. These two inmates were observed to be sleeping in the cells outside the ward and therefore they were not considered when calculating space allocation inside the ward. Therefore, the total number of inmates in this ward was considered to be 123. Few people were observed to be sleeping near the toilet.

*Female Remand Section has four cells. It was observed that those were not in use on the day of the inspection. Floor space not calculated.

*There are two sections in the PH, convicted and remandee. In the convicted section there were eight beds. In the remandee section there were seven beds.

*In all the floor space calculations in cells, space occupied by toilets/tanks were disregarded as those are not inside the cell.

4. BRP - Number of prisoners in each ward as at 7 June 2019, the day of the Commission's inspection of the prison

BRP - Space allocation per person in a ward										
Name of the Ward	No. of Inmates	No. of Cells	No. of Toilets	Space Occupied by Toilets (sq. ft.)	No. of Tanks	Space Occupied by Tanks (sq. ft.)	Corridor Measurements (sq. ft.)	Floor Space (sq. ft.)	Space Occupied by Inmates (sq. ft.)	Space per Person (sq. ft.)
A1 (Special)	4	4	0	0.00	0	0.00	0.00	84.00	84.00	21.00
A2 Cell	52	5	0	0.00	0	0.00	0.00	84.00	84.00	1.62
C Ward (YO)	3		1	20.00	0	0.00	0.00	126.00	106.00	35.33
D Ward	45		1	20.00	1	9.00	0.00	500.00	471.00	10.47
E Ward	50		1	20.00	1	9.00	0.00	500.00	471.00	9.42
J Ward	57		2	40.00	1	15.00	0.00	754.00	699.00	12.26
F Ward	18		1	20.00	0	0.00	0.00	270.00	250.00	13.89
I Ward	6		1	20.00	0	0.00	0.00	320.00	300.00	50.00
K 1 Ward	24		2	40.00	1	20.00	0.00	1200.00	1140.00	47.50
K 2 Ward	36		2	40.00	1	16.00	0.00	1200.00	1144.00	31.78
Female Section	12		1	20.00	0	0.00	0.00	496.00	476.00	39.67

*In the cell wards there are no toilets inside the cell; therefore, toilet measurements and corridor measurements have been excluded.

*In A2 Cells, on inspection day, there were six to eight people per cell and inmates who had been in prison longer sleep inside the cell while new entrants sleep outside in the corridor. Space allocation per person inside the cell is significantly less as it is calculated disregarding the fact that new entrants are sleeping in the corridor.

*In J Section, there is a ward and a cell. There are eight people, who are considered as mentally ill inmates, in the cell during the day time. However, they sleep in the ward at night and J Ward floor space per person is calculated inclusive of those eight inmates.

5. GRP - Number of prisoners in each ward as at 26 June 2018, the day of the Commission's inspection of the prison

GRP - Space allocation per person										
Name of the Ward	No. of Inmates	No. of Cells	N o. of T oil et s	Space Occupied by Toilet s (sq. ft.)	No. of Ta nks	Space Occupied by Tank s (sq. ft.)	Corri dor Meas urem ents	Floor Space (sq. ft.)	Space occupied by Inmates (sq. ft.)	Space per Perso n (sq. ft.)
A Cell	112	19	0	0.00	0	0.00	0.00	1605.12	1605.12	14.33
B Cell	166	20	0	0.00	0	0.00	0.00	1689.60	1689.60	10.18
C Cell	78	13	0	0.00	0	0.00	0.00	821.34	821.34	10.53
C Special Cell	11	4	0	0.00	0	0.00	0.00	252.72	252.72	22.97
D Cell	85	20	0	0.00	0	0.00	0.00	1263.60	1263.60	14.87
E Special Cell	14	6	0	0.00	0	0.00	0.00	341.28	341.28	24.38
G Ward	36		1	25.00	0	0.00	0.00	321.44	296.44	8.23
I Ward	39		1	48.00	0	0.00	0.00	401.60	353.60	9.07
Female J	33		2	50.00	0	0.00	0.00	258.57	208.57	6.32
Female J (Part 1)	7		1	20.00	0	0.00	0.00	92.30	72.30	10.33
Female J (Part 2)	7		1	20.00	0	0.00	0.00	92.16	72.16	10.31
PH	13		0	0.00	0	0.00	0.00	623.24	623.24	47.94

*H ward measurements are excluded from the space allocation sheet because the data gathered by the Commission on inspection day and the data given by HQ are conflicting.

*There are twenty-two cells in A cell and three of them were not used. Seven to nine inmates in each cell.

*Fourteen normal cells in C cell ward and one of the cells was not in use. Five to seven people in each cell.

6. HWC - Number of prisoners in each ward as at 8 May 2018, the day of the Commission's inspection of the prison

Ward Name	No. of Inmates	No. of Cells	No. of Toilets	Space Occupied by Toilets (sq. ft.)	No. of Tanks	Space Occupied by Tanks (sq. ft.)	Floor Space (sq. ft.)	Space Occupied by Inmates (sq. ft.)	Space per Person (sq. ft.)
B1 (Old building) YO cell	25	10	2	0.00	1	0.00	589.30	589.30	23.57
B2 (Old Building)	10		2	38.84	1	5.66	978.597	934.10	93.41
Kokila House	10		1	10.85	1	2.97	400.00	386.18	38.62
Batithi House	10		1	10.85	1	2.97	400.00	386.18	38.62
Paravi House	12		1	10.85	1	2.97	400.00	386.18	32.18
Mayura House	12		1	10.85	1	2.97	400.00	386.18	32.18
Gemunu House	12		1	10.85	1	2.97	400.00	386.18	32.18
Malithi House	14		1	10.85	1	2.97	400.00	386.18	27.58
Binara House	12		1	10.85	1	2.97	400.00	386.18	32.18
Tisara House	12		1	10.85	1	2.97	400.00	386.18	32.18

7. KRP – Number of prisoners in each ward as at 30 May 2018, the day of the Commission's inspection of the prison

KRP - Space Allocation per Person										
Name of the Ward	No. of Inmates	No. of Cells	No. of Toilets	Space Occupied by Toilets (sq. ft.)	No. of Tanks	Space Occupied by Tanks (sq. ft.)	Corridor Measurements (sq. ft.)	Floor Space (sq. ft.)	Space Occupied by Inmates (sq. ft.)	Space per Person (sq. ft.)
Mental Patient Ward	22		1	13.34	0	0.00	0.00	449.44	436.10	19.82
PH Ward	16		3	66.96	0	0.00	0.00	2229.00	2162.04	135.13
PH Cell Special	0	3	3	22.50	0	0.00	0.00	159.30	136.80	N/A
D1 Cell	10		1	15.35	0	0.00	0.00	210.70	195.35	19.53
D2 Cell	18		1	15.35	0	0.00	0.00	210.56	195.21	10.84
D3 Cell	17		1	15.27	0	0.00	0.00	235.92	220.65	12.98
C1 Cell	22		1	15.35	0	0.00	0.00	210.70	195.35	8.88
C2 Cell	25		1	15.35	0	0.00	0.00	210.56	195.21	7.81
C3 Cell	26		1	15.27	0	0.00	0.00	235.92	220.65	8.49
C4 Cell	17		1	15.48	0	0.00	0.00	266.84	251.36	14.79
B Special Cell	8	8	0	0.00	0	0.00	0.00	402.71	402.71	50.34
B Ward	101		2	31.42	1	12.87	105.72	1219.00	1068.99	10.58
A Cell	78	10	0	0.00	0	0.00	0.00	503.39	503.39	6.45
A Ward	78		2	24.42	1	27.30	100.0399	1350.00	1198.24	15.36
H Special Cell	8	8	0	0.00	0	0.00	0.00	515.42	515.42	64.43
H Ward	51		3	41.40	1	19.11	99.69	1350.00	1189.80	23.33
Female 1	9		1	15.32	0	0.00	0.00	210.70	195.38	21.71
Female 2	10		1	15.32	0	0.00	0.00	210.56	195.24	19.52
Female 3	9		1	15.27	0	0.00	0.00	235.92	220.65	24.52
Female 4	7		1	15.48	0	0.00	0.00	266.84	251.36	35.91

*E Ward and Cell measurements are excluded from the space allocation sheet because the data gathered by the Commission on the inspection day and the data provided by the Prisons Headquarters are conflicting.

*D4 cell was not in use at the time of the inspection.

*In a cell, there were around five inmates each and inmates are allowed to sleep in the corridors. Space allocation per person inside a cell is significantly less.

*All the washrooms/tanks are outside the cells in cell wards, so the space occupied by those are not deducted.

8. KWC - Number of prisoners in each ward as at 3 June 2018, the day of the Commission's inspection of the prison

KWC - Space Allocation per Person:

Ward	No. of Inmates	No. of Toilets	Space Occupied by Toilets (sq. ft.)	Floor Space (sq. ft.)	Space occupied by Inmates (sq. ft.)	Space per Person (sq. ft.)
Karuna	35	2	30	1659.00	1629.00	46.54286
Maithree	32	2	26	1496	1470.00	45.9375

9. WWC - Number of prisoners in each ward as at 23 June 2018, the day of the Commission's inspection of the prison

WWC - Space Allocation per Person								
Name of the Ward	No. of Inmates	No. of Cells	No. of Toilets	Space Occupied by Toilets (m ²)	Corridor Measurements (m ²)	Floor Space (m ²)	Space Occupied by Inmates (m ²)	Space per Person (m ²)
Ward 1	36		2	4.40	33.60	129.00	91.00	2.53
Ward 2	46		2	4.40	33.60	129.00	91.00	1.98
Ward 3	23		2	4.40	33.60	129.00	91.00	3.96
Ward 4	30		2	4.40	33.60	129.00	91.00	3.03
Ward 5	24		2	4.40	33.60	129.00	91.00	3.79
Ward 6	31		2	4.40	33.60	129.00	91.00	2.94
Ward 8	26		1	1.90	0.00	137.95	136.05	5.23
Ward 10	19		2	6.80	5.40	111.87	99.67	5.25
Ward 10 [Cell section]	3	1	1	1.60	0.00	16.20	14.60	4.87
PH Ward	8		1	4.80	0.00	28.14	23.34	2.92

*Tank measurements are excluded because HQ provided them in cubic feet.

*PH has only seven beds.

8. Food

Annex 8.1.: Categories of Vegetables

517. Where vegetables are specified in diets the vegetables to be supplied shall be as follows:—

Category A—Leaves

Murunga leaves	Kathuromurunga
Gotukola	Kankun
Mukunuwenna	Kohila leaves
Tampala	Saarana
Niviti	Cabbage

Category B—Vegetable Fruits

Brinjals	Plantains
Bandakka	Tomatoes
Bombay Onions	Bitter Gourd
Long Beans	Red Pumpkin
Drumsticks	Snake Gourd

Category C—Starchy Vegetables

Potatoes	Kiriala
Sweet Potatoes	Breadfruit
Innala	Jakfruit
Welala	Beetroot
Manioc	

Category D

Butter Beans	Leeks
Celery	Parsnips
Kidney Beans	Cauliflower.

Annex 8.2.: Dietary scales (Schedule I and Schedule IA)

SCHEDULE IA

Annex 8.3.: Diet Distribution under dietary scales "A" and "B"

511. The distribution of prison diets contained in Schedule 1 (referred to in Statutory Prison Rule 222) of the Statutory Prison Rules shall, subject to such alterations as may from time to time be authorised in writing by the Commissioner, be as follows:—

Diet Distribution under Dietary Scale " A "

	<i>Morning Meal</i>	<i>Midday Meal</i>	<i>Evening Meal</i>	<i>Evening Cup of Tea</i>
Ordinary Non- Vegetarian	6 oz. bread, 1 oz. sugar, 8 oz. rice, 2 oz. plantain 1/16 oz. tea, 2 spoonfulls sambol	6 oz. rice, 2 oz. meat, 1 oz. curry or substitute, 1 oz. vegetable mal-lun or curry, 2 oz. fish	6 oz. rice, 2 oz. meat, 1 oz. dhall curry, 3 oz. vegetable curry	1 oz. sugar, 1/16 oz. tea
Ordinary Vege-tarian	6 oz. bread, 1 1/2 oz. sugar, 8 oz. rice, 2 oz. plantain 1/16 oz. tea, 2 spoonfuls sambol	6 oz. rice, 2 oz. dhall curry or substitute, 2 oz. dhall curry, 1 oz. vegetable mal-lun curry	6 oz. rice, 2 oz. dhall curry, 3 oz. vegetable curry	1 oz. sugar, 1/16 oz. tea
Punishment No. 1	4 oz. bread, 1/2 oz. sugar, 8 oz. rice, 1 oz. veget-able mallun or curry, 2 spoonfuls sambol	8 oz. rice, 1/2 oz. salt	8 oz. rice, 1/2 oz. salt	1 oz. Sugar, 1/16 oz. tea <i>2 oz. Veg.</i>
Punishment No. 2	1/2 oz. sugar, 1/16 oz. tea	6 oz. rice, 1/2 oz. salt	6 oz. rice, 1/2 oz. salt	1 oz. sugar, 1/16 oz. tea
Low	... 2 oz. rusk, 1/2 oz. sugar, 2 oz. rusk, 2 oz. sago, 2 oz. rusk, 2 oz. sago, 1 oz. sugar, 2/16 oz. tea	6 oz. milk, 1/2 oz. sugar	6 oz. milk, 1/2 oz. sugar	1/16 oz. tea
Light labour Non- vegetarian	2 oz. congee rice, 1 oz. sugar, 1/16 oz. tea, 2 spoonfuls sambol	8 oz. rice, 2 oz. plantain curry, 1 oz. veget-able curry or mallun	8 oz. rice, 3 oz. fish curry, 3 oz. vegetable curry	1 oz. sugar, 1/16 oz. tea
Light labour vege-tarian	2 oz. congee rice, 1 oz. sugar, 1/16 oz. tea, 2 spoonfuls sambol	8 oz. rice, 2 oz. plantain curry, 1 oz. veget-able curry or mallun	8 oz. rice, 2 oz. dhall curry, 3 oz. veget-able curry	1 oz. sugar, 1/16 oz. tea
Diabetic, non-vegetarian	2 oz. rice congee, 2 eggs, 8 oz. bread, 3 oz. meat, 8 oz. bread, 3 oz. meat, 1/2/16 oz. tea, 6 oz. milk, 2 saccharine tablets	3 oz. fresh fish, 4 oz. vegetables, 2 oz. vegetables, 6 oz. milk, 1 saccharine tablet	3 oz. fresh fish, 4 oz. vegetables, 2 oz. potatoes, 6 oz. milk, 1 saccharine tablet	1 saccharine tablet, 1/16 oz. tea
	(Allowances of dripping, ripe chilly, onion, pepper, salt and mustard in this diet will be utilized to cook and season the egg, meat and fish rations. No part of this diet will be curried.)			
Diabetic, vegeta-rian	2 oz. rice congee, 1/16 oz. tea, 10 oz. milk, 2 saccharine tablets	3 oz. rice, 4 oz. vegetables, 1/16 oz. tea, 1 saccharine tablet, 10 oz. milk	3 oz. rice, 4 oz. vegetables, 1 oz. dhall, 10 oz. milk	1 saccharine tablet, 1/16 oz. tea

Note.—(1) In the diets marked † an allowance of 1/5th oz. ginger will be utilized in the making of the morning and evening cup of tea.

(2) The prescribed allowances of coconut, lime, onions, chillies (ripe and dry), pepper, salt, garlic, karapinchha leaves, turmeric, corriander, cummin seed and tamarind, whenever prescribed in the diet under this scale except in the Diabetic non-vegetarian diets shall be issued for preparation of "mallun" or curries for midday and evening meals.

(3) Currysuffs for the preparation of Punishment No. 1 diet are to be confined to the prescribed quantities of coconut, lime, pepper and salt only.

*(4) Vegetable marked * shall be from category "A".*

(5) Vegetable marked † shall be from category "B" or "C".

(6) In the diets marked § the following ingredients for every 12 diets will be utilized for the preparation of the morning sambol.

1 coconut, 1 oz. dry chillies, 2 oz. onions, 2 oz. salt, and 2 limes.

(7) Vegetables other than dried pulses should under no circumstances be used as substitutes for beef.

(8) Substitute vegetable in lieu of curry plantains may be drawn on not more than 4 times a week from the following varieties only:—Cabbage, bandakka, Bombay onions, drumsticks, tomatoes, bitter gourd, snake gourd, beet root, carrots, beans, kiriala and innala.

Diet Distribution under Dietary Scale " B "

	<i>Morning Meal</i>	<i>Midday Meal</i>	<i>Evening Meal</i>	<i>Evening Cup of Tea</i>
Ordinary Vegetarian	4 oz. oatmeal, 6 oz. bread, 4 oz. meat, 8 oz. bread, 4 oz. meat, 1 oz. sugar, bread, 1 ripe plantain, 4 oz. vegetables, 4 oz. 4 oz. vegetables, 4 oz. 1/16 oz. tea 2 oz. sugar, 3 oz. milk, potatoes, 1 ripe plantain, 3 oz. milk, 1/16 oz. tea 1/16 oz. tea			

(Allowances of dripping, lime, onions, salt, pepper, and mustard in this diet to be used for seasoning the meat and vegetable rations. If desired lime may be issued as lime juice water for midday meal.)

Ordinary Vegetarian	4 oz. oatmeal, 6 oz. bread, 4 oz. vegetables, 2 oz. dhall, 7 oz. milk, 2 oz. sugar, 1/16 oz. tea	8 oz. bread, 4 oz. vegetables, 2 oz. dhall, 4 oz. potatoes, 1 ripe plantain	8 oz. bread, 4 oz. vegetables, 4 oz. potatoes, 1 ripe plantain, 1/2 oz. sugar, 7 oz. milk, 1/16 oz. tea	1 oz. sugar, 1/16 oz. tea
---------------------	--	---	---	---------------------------

(Allowances of coconut oil, lime, onions, pepper, salt and mustard in this diet to be used to season vegetable and dhall rations. If desired lime may be served as lime juice water for midday meal.)

Punishment No. 1	8 oz. bread	.. 8 oz. bread, 5 oz. vegetables, 4 oz. potatoes	8 oz. bread, 5 oz. vegetables, 4 oz. potatoes	1 oz. sugar, 1/16 oz. tea
------------------	-------------	--	---	---------------------------

(Issues of salt and pepper in this diet to be used to season vegetable ration.)

Punishment No. 2	8 oz. bread	.. 8 oz. bread	.. 8 oz. bread	.. 1 oz. sugar, 1/16 oz. tea
------------------	-------------	----------------	----------------	------------------------------

Low	.. 4 oz. rusk, 4 oz. milk, 1 oz. sugar	2 oz. rusk, 2 oz. sago, 8 oz. milk	2 oz. rusk, 2 oz. sago, 4 oz. milk, 1 oz. sugar, 1/16 oz. tea	1 oz. sugar, 1/16 oz. tea
-----	--	------------------------------------	---	---------------------------

Light labour, non-vegetarian	4 oz. oatmeal, 4 oz. bread, 3 oz. fish, 6 oz. bread, 1 oz. sugar, 1/2 oz. sugar, 1/16 oz. tea	3 oz. fish, 6 oz. bread, 3 oz. vegetables, 4 oz. potatoes, 1 ripe plantain		3 oz. fish, 6 oz. bread, 3 oz. vegetables, 4 oz. potatoes, 1/2 oz. sugar, 1/16 oz. tea
------------------------------	---	--	--	--

(Allowances of dripping, pepper, salt and mustard in this diet to be used to cook and season fish and vegetable rations.)

Light labour, vegetarian	4 oz. oatmeal, 4 oz. bread, 3 oz. vegetables, 1 ripe plantain, 1/2 oz. sugar	6 oz. bread, 3 oz. dhall, 4 oz. potatoes, 1 ripe plantain	6 oz. bread, 3 oz. dhall, 4 oz. potatoes, 1 ripe plantain, 4 oz. milk, 1/2 oz. sugar, 1/16 oz. tea	1 oz. sugar, 1/16 oz. tea
--------------------------	--	---	--	---------------------------

(Allowances of coconut oil, pepper, salt and mustard in this diet to be used to cook and season vegetable and dhall rations.)

Diabetic, non-vegetarian	4 oz. oatmeal, 6 oz. milk, 2 eggs, 4 oz. ripe pawpaw, 4 oz. bread, 1/16 oz. tea, 1 saccharine tablet	6 oz. meat, 6 oz. bread, 4 oz. vegetables, 2 oz. potatoes	6 oz. fish, 6 oz. bread, 4 oz. vegetables, 2 oz. potatoes, 6 oz. milk, 1/16 oz. tea, 1 saccharine tablet	1 oz. saccharine tablet, 1/16 oz. tea
--------------------------	--	---	--	---------------------------------------

(Allowances of dripping, onions, pepper, salt, chillies, and mustard in this diet to be used to cook and season egg, fish meat and vegetable rations.)

Diabetic, Vegetarian	2 oz. oatmeal, 4 oz. ripe papaw, 12 oz. milk, 1/16 oz. tea, 1 saccharine tablet	3 oz. bread, 5 oz. vegetables, 2 oz. dhall, 1 oz. butter, 16 oz. milk	3 oz. bread, 5 oz. vegetables, 2 oz. dhall, 1 oz. butter, 12 oz. milk, 1 saccharine tablet	1 oz. saccharine tablet, 1/16 oz. tea
----------------------	---	---	--	---------------------------------------

(Allowances of onions, lime, pepper and salt in this diet to be used to cook and season vegetable and dhall rations.)

The distribution of the various hospital diets set out in Schedule 1A of the Prison Rules shall be in accordance with such written instructions as may be given from time to time by the Medical Officer and approved by the Superintendent.

16. Rehabilitation of Prisoners

Annex 16.1.: Drug Preventive Treatment and Rehabilitation Centre, Weerawila Work Camp

Daily Schedule 2018

0445h – 0600h	-	Wake up and take a bath
0615h – 0645h	-	Physical exercise
0650h – 0725h	-	Breakfast
0730h – 0830h	-	Morning meetup, religious observations, simple mental exercise
0835h – 1015h	-	Team counselling/personal counselling
1015h – 1030h	-	Tea break
1030h – 1130h	-	Treatment programmes
1130h – 1330h	-	Afternoon break, reading newspapers and magazines
1330h – 1500h	-	Treatment programmes
1500h – 1600h	-	Outdoor sports
1600h – 1730h	-	Cleaning (bathing), cleaning the institution
1730h – 1900h	-	Evening meetup (self-reflection; inmates share experiences with rehabilitated inmates)
1900h – 1930h	-	Watching evening news
1930h – 2015h	-	Dinner
2015h – 2130h	-	Indoor games (carrom, checkers, chess), watching television, reading books and newspapers
2130h – 2200h	-	Cleaning, religious observations and going to sleep

Annex 16.2.: Drug Preventive Treatment and Rehabilitation Centre, Weerawila Work Camp

Daily Performance Sheet

Name of the Beneficiary (Inmate) and Number:

7 Relationship with the family

Marks: Weak - 1, Average - 2, Good - 3

17. Prison Work

Annex 17.1.: Circular No. 64/1982 titled 'Wages Scheme for the Industrial, Agricultural and Domestic Services in Prisons, Borstal and OPCs'

Grade	Requirement/s	Daily Wage	Daily Savings
		Prisoner	Prisoner
Probation	Prisoners are placed on probation for the first six months of their sentence and therefore do not receive any wages for the work they undertake.	0	0
Grade I	After the first six months, prisoners advance to Grade I.	Rs. 1.00	25 cents of this must mandatorily be saved
Grade II	<p><u>In Industrial Sections:</u></p> <p>I. If any prisoner was proficient before imprisonment in the industry to which they are allocated, and is proficient in that skill, the prisoner can be promoted to Grade II after six months of probation OR</p> <p>II. Prisoners who have achieved seventy-five to eighty performance marks and an attendance percentage of 90% can be promoted to Grade II after being in Grade I for twelve months OR</p> <p>III. Notwithstanding the time spent under Grade I, if a prisoner has passed an approved vocational examination, they can be promoted to Grade II.</p> <p><u>In Domestic Services:</u></p> <p>Cooks and barbers can be promoted to Grade II after serving twelve months in Grade 1, if their industry and conduct is exemplary.</p>	Rs. 1.50	50 cents of this must be saved

Grade III	<p><u>In Industrial Sections:</u></p> <p>A prisoner who has satisfactory knowledge regarding a particular industry and who is able to do his own work without assistance from an instructor, and who is not planning to work as a 'Special Duty' prisoner or a PH attendant, and who has obtained seventy-five to eighty marks at least for 50% time spent in prison, and whose absence rate is no more than 10% can be promoted to Grade III, after completing twelve months in Grade II.</p> <p><u>In Domestic Services:</u></p> <p>A prisoner will be appointed as a 'Special Duty' prisoner or an attendant or main cook of Grade III after serving twelve months in Grade II, if they have displayed exemplary conduct and discipline.</p> <p>Prisoners working in the kitchen, who have achieved Grade II and can work efficiently without supervision, are eligible to be appointed as a main cook. The total number of main cooks must not be more than 10% of the total kitchen party population.</p>	Rs. 2.00	Rs. 1.00 of this must be mandatorily saved
Grade IV	<p><u>In Industrial Sections:</u></p> <p>I. When a prisoner has completed 18 months in Grade III; and II. When there is a suitable opportunity to appoint as an Instructing Prisoner, those who have proved they are qualified, are trustworthy and have qualities of holding leadership, have received training/practice to instruct other prisoners, they may be awarded Grade IV.</p> <p><u>In Domestic Services:</u></p> <p>I. After a "Special Duty" prisoner has spent eighteen months in Grade III and they are trustworthy and bear leadership qualities, and have proven that they are suitable to be appointed as a "Disciplinary Prison Orderly", they may be appointed as such, if there is opportunity to do so.</p> <p>NB: Only the CGP can appoint Instructing Prisoners and Disciplinary Orderlies.</p>	Rs. 2.50	Rs. 1.25 of this must be mandatorily saved

Annex 17.2. – Remuneration for Open Prison Camps/Work Camp

Grade	Requirement	Daily Wage	Daily Savings
Grade I	It is considered that a prisoner who is transferred to an OPC starts working in this Grade from the day he was transferred.	Rs. 1.00	25 cents
Grade II	Every prisoner who has worked in Grade I for three months and who maintained exemplary conduct will be eligible to be promoted to this Grade.	Rs. 1.50	50 cents
Grade III	A prisoner who has worked in Grade II for three months, a prisoner who has been especially selected to be an assistant leader of an industrial or an agricultural section or a prisoner who has been especially selected to be a worker at the office, the main entrance, the prison hospital/dispensary, the stores or the temple will be promoted to Grade III.	Rs. 2.00	75 cents
Grade IV	If special qualities regarding leadership and loyalty can be observed in a prisoner who has spent three months in Grade III, he will be appointed as a leader or an instructor of an agricultural or industrial section or a house.	Rs. 2.50	Rs. 1.00

18. Early Release of Rehabilitated Prisoners

Annex 18.1.: Application for Home Leave (As per Circular No. 05/2012)

1. Prison:
2. Prisoner's name, number and permanent address:
3. Total sentence duration:
4. Police inspection period:
5. Date of commencement of sentence:
6. Date of release with pardon:
7. Date of being eligible for release on permit:
8. Offence (with the provision under which the sentence was given):
9. Case number (With the appeal number):
10. Work section:
11. Grade:
12. Prison complaints and punishment (Yes/No):
 - a. If yes, relevant details
13. Internal voluntary work:
14. Whether employed within or outside the prison:

15. The guardian of the prisoner during the Home Leave:
16. Person's name, NIC no and Address
17. (The address should be stated in a manner that is convenient to find)
18. Their kinship, name and NIC no:
19. Marital status:
20. Number of terms on which home leave taken, previously:
21. If in outside cells, the date of admission:
22. Name and signature of the Welfare Officer preparing the report:
23. Name, designation and signature of the inspecting officer:
24. Date of convening of the Home Leave Board:
25. Recommendation of the Home Leave Board:
26. Recommended no. of days:

I agree/disagree with the decision of the Home Leave Board.

Date:

19. Prisoners on Death Row

Annex 19. 1 - List of offences which carry the death penalty in Sri Lankan legislation

Mandatory death sentence	Penal Code	Section 114	Treason; Waging war against the Republic, or attempts or abets the waging of such war.
Mandatory death sentence	Penal Code	Section 114	Abetting Mutiny; Abetting the committing of mutiny by an officer, sailor, soldier or airman in the Sri Lanka navy, Sri Lanka army or Sri Lanka air force.
Mandatory death sentence	Penal Code	Section 296	Murder
Mandatory death sentence	Penal Code	Section 191	Giving false evidence resulting in the conviction and execution of an innocent person.
Mandatory death sentence	Penal Code	Section 299	Abetting suicide.
Mandatory death sentence	Poisons, Opium and Dangerous Drugs	Section 54 (a) (b)	Manufacturing heroin, cocaine, morphine or opium.

Death or Life imprisonment	Poisons, Opium and Dangerous Drugs	Schedule III	Drugs possession, trafficking, importing or exporting 500g of and above Opium 3 grams of Morphine. 2 grams of Cocaine 2 grams of Heroin
Death or Life imprisonment	Firearms Ordinance as amended by Act 22 of 1996	Section 44 (a) and Schedule C	Offences against the state (Penal Code 114-123) with the use of a gun
Death or Life imprisonment	Firearms Ordinance as amended by Act 22 of 1996	Section 44 (a) and Schedule C	Offences relating to the Army, Navy, Air Force (Penal Code 122-123) with the use of a gun
Death or Life imprisonment	Firearms Ordinance as amended by Act 22 of 1996	Section 44 (a) and Schedule C	Culpable homicide (Penal Code 296, 297, 300, 301) with the use of a gun.
Death or Life imprisonment	Firearms Ordinance as amended by Act 22 of 1996	Section 44 (a) and Schedule C	Voluntarily causing hurt by a weapon (Penal Code 315-324) with the use of a gun.
Death or Life imprisonment	Firearms Ordinance as amended by Act 22 of 1996	Section 44 (a) and Schedule C	Criminal Force as mentioned in Penal Code Sec. 344, 345, 347 with the use of a gun.
Death or Life imprisonment	Firearms Ordinance as amended by Act 22 of 1996	Section 44 (a) and Schedule C	Extortion as mentioned in Penal Code Sec. 373-378 with the use of a gun.
Death or Life imprisonment	Firearms Ordinance as amended by Act 22 of 1996	Section 44 (a) and Schedule C	Robbery as mentioned in Penal Code Sec. 380-385 with the use of a gun.
Death or Life imprisonment	Firearms Ordinance as amended by Act 22 of 1996	Section 44 (a) and Schedule C	Kidnapping, abductions, human trafficking as mentioned in Penal Code Sec. 354-360 A with the use of a gun.
Death or Life imprisonment	Firearms Ordinance as amended by Act 22 of 1996	Section 44 (a) and Schedule C	Rape as mentioned in Penal Code Sec. 364 with the use of a gun.
Death or Life imprisonment	Firearms Ordinance as amended by Act 22 of 1996	Section 44 (a) and Schedule C	Carnal intercourse with young girls as mentioned in Penal Code Sec. 364 A with the use of a gun.
Death or Life imprisonment	Firearms Ordinance as amended by Act 22 of 1996	Section 44 (a) and Schedule C	Abetting or attempting to commit any offences mentioned in Penal Code Sec. 161-450 with the use of a gun.
Death or Life imprisonment	Firearms Ordinance as amended by Act 22 of 1996	Section 44 (a) and Schedule C	Any Offences under the Poisons, Opium and Dangerous Drugs Ordinance committed with the use of a gun.
Mandatory death sentence	Sri Lanka Navy Act of 1950	Sections 54, 55, 56	Treason; Murder
Death of Life imprisonment	Sri Lanka Navy Act of 1950	Sections 54, 55, 56	Traitorous failure to engage with the enemy; Failures out of cowardice; Failing to defend convoys or demanding compensation for protection; Abandoning post traitorously or in cowardice; Failure to suppress mutiny; Mutiny or incitement to mutiny; Desertion to the enemy; Unlawful arson of non-combatant property.

Mandatory death sentence	Sri Lanka Air Force Act of 1949	Sections 95, 97, 98, 131 (1-2)	Treason; Murder.
Death or other punishment	Sri Lanka Air Force Act of 1949	Sections 95, 97, 98, 131 (1-2)	Cowardice; Disregarding warlike orders; Mutiny; Destruction of military assets; Acts to undermine military operations; Assisting the enemy; Giving false signals; Treachery; Espionage; Voluntarily serving or aiding the enemy when taken as a prisoner.
Mandatory death sentence	Sri Lanka Army Act of 1949	Sections 95, 97, 98, 131 (1-2)	Treason; Murder.
Death or other punishments	Sri Lanka Army Act of 1949	Sections 95, 97, 98, 131 (1-2)	Cowardice; Disregarding warlike orders; Mutiny; Destruction of military assets; Acts to undermine military operations; Giving false signals; Treachery; Giving notice to the enemy; Assisting the enemy; Espionage; Voluntarily serving or aiding the enemy when taken prisoner.

35. Abbreviations

AD - Acting Director of Prison Health Care

AG - Attorney General

ASP - Assistant Superintendent of Prisons

BATA- Subsistence, travelling and meal allowances

CBC Act - Community Based Corrections Act No. 46 of 1999

CCP- Code of Criminal Procedure Act No. 15 of 1979

CERD- International Convention on the Elimination of All Forms of Racial Discrimination

CGP - Commissioner General of Prisons

CID- Criminal Investigation Department

CJ - Chief Jailor

Commissioner ISD - Commissioner of Prisons Industries and Skills Development

CRC - The UN Convention on the Rights of the Child

CRTC- Centre for Research and Training in Corrections

CYPO - Children and Young Persons Ordinance Act No. 47 of 1956

DGHS - Director General of Health Services

DHS - Director of Health Services

DIG – Deputy Inspector General

DOP - Department of Prisons

DRK - Diet Roll Keeper

DRM - Disaster Risk Management

DS - Divisional Secretariats

DSO - Departmental Standing Orders of 1956

ESK - Equipment Store Keeper /Stores

FO - First Offender

FSP - Floor space per prisoner

GAD - Government Analyst Department

GANHRI - Global Alliance of National Human Rights Institutions

GC4 - General Comment No: 4 on Article 7 of ICCPR

GH - General Hospital

ICCPR - International Covenant on Civil and Political Rights

ICRC - International Committee of Red Cross

IGP - Inspector General of Police

IP - Inspector of Police

IRC - Island reconvicted criminal

JMO - Judicial Medical Officer

JSC - Judicial Services Commission

LAC - Legal Aid Commission

MO – Medical Officer

MOH – Ministry of Health

MOIC - Medical Officer in Charge

MOJ – Ministry of Justice and Prison Reforms

MRI - Magnetic Resonance Imaging

MSK - Morning Staff Keeper

NAITA - National Apprentice and Industrial Training Authority

NATA - National Authority on Tobacco and Alcohol Act

NDDCB - National Dangerous Drugs Control Board

NH - National Hospital

NIC - National Identity Cards

NIMH - National Institute of Mental Health

NPC - National Police Commission

NPM - National Preventative Mechanism

NVQ - National Vocational Qualification

OIC – Officer in Charge

OPCAT - UN Optional Protocol to the Convention Against Torture

OPD - Out Patient Division

OT - Over-time payments

PGM - P.G. Martin Workshop

PH - Prison Hospital

PHI - Public Health Inspector

PJDL - United Nations Rules for Protection of Juveniles Deprived of their Liberty of 1990

PO - The Prisons Ordinance No.16 of 1877

POO - Probation of Offenders Ordinance No. 42 of 1944

PTA - Prevention of Terrorism Act No. 48 of 1979

R/C - Reconvicted Offender

R/R/C - Recidivist

RC - Registration Clerk Branch

RDHS - Regional Director of Health Services

RMP - Registered Medical Practitioner

SD - Special Duty

SM - School Master Branch

SMR – Standard Minimum Rule

SOR - Scheme of Recruitment

SP - Superintendent of Prisons

SRs - The Subsidiary Legislation under the Prison Ordinance of 1956

STF - Special Task Force

TB - Tuberculosis

TID - Terrorist Investigation Department

TNA - Training Needs Assessment

UDHR - Universal Declaration of Human Rights

UN ECOSOC- United Nations Economic and Social Council

UNODC - United Nations Office on Drugs and Crime

VTA - Vocational Training Authority

WHO - World Health Organization

WPC - Woman Police Constable

YO - Young Offender

YOTO - Youthful Offenders (Training Schools) Ordinance No. 28 of 1939