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COMMITTEE FOR PROTECTING RIGHTS OF PRISONERS

2nd December 2020

To: Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Special Rapporteur on extrajudicial, summary or arbitrary executions of the UN Human Rights Council

Urgent Appeal on the situation of Prisons in Sri Lanka

We are writing this appeal to you in the aftermath of the killing of 11 prisoners and injuring of more than 100 at a prison in Sri Lanka on 2nd December 2020. Numbers may further increase. At least 4 other prisoners have been reported to have been killed in Sri Lanka this year. An 82-year-old inmate had died of COVID-19 and more than 1000 prisoners have been confirmed COVID-19 positive. Around 12 suicides have been reported this year in prisons, with most appearing to be suspects who are alleged to have used and / or traded drugs and / or illicit liquor. It appears that prison authorities are not providing professional support and care for such persons and not putting in place adequate mechanisms to prevent suicides. There are also concerns about the lack of nutritious food, the restricting of visits from family members without adequate alternative communication facilities and the deployment of Special Commandos trained for armed conflict to prisons.

Since March this year, we have appealed to the President and other authorities to ensure the protection of prisoners in the context of COVID-19. We pointed out the inability of inmates to practice health guidelines due to massive congestion and suggested practical steps that could be taken to release prisoners and reduce congestion through existing legal and constitutional provisions. Though there were some prisoners released immediately after our letter, large numbers of new inmates were admitted to prisons afterwards. It appears that prisoner releases and preventing COVID-19 outbreak in prisons had been forgotten until the outbreak of COVID-19 in prisons last month. It was only just before the latest killings, that media reported that some measures may be taken in coming days to release prisoners.

We urge you to inquire into the latest incident and to call on the government to practice restraint and abide by national and international laws when responding to any tensions in prisons. 8 of those killed are subsequently reported to have tested COVID-19 positive and we are also worried that if their remains are cremated, that may hamper criminal investigations to hold those responsible accountable. We have also brought this to the attention of Welisara Magistrate today (2nd December).

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We also stress the importance of addressing causes that lead prisoners to try and escape and protest. In particular, to urgently take measures to ensure rights of prisoners and protect them and prison staff from COVID-19.

We are attaching a more detailed note on the above concerns, including statistics and practical steps that could be taken.

Sincerely yours,



**Committee For Protecting Rights Of
Prisoners (Guarantee) Limited**

No. 188, Hulftsdorp Street,
Colombo 12.

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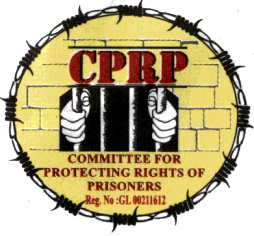
Seneka Perera, Attorney-at-Law

Chairman

cc.

UN High Commissioner for Human Rights

UN Resident Coordinator in Sri Lanka



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COMMITTEE FOR PROTECTING RIGHTS OF PRISONERS

Prisons in Sri Lanka in 2020: killings, COVID-19 death, infections, suicides etc.

1. Killings, suicides and COVID infections

On 2nd December, at least 11 prisoners are reported to have been killed and more than 100 injured after tensions arose in the aftermath of detainees in Mahara prison (Gampaha district) demanding that COVID-19 positive detainees be separated. The number of those killed and injured may rise. On that day, 176 inmates and 7 officials in the Mahara prison were reported to have tested positive for COVID-19.ⁱ On the morning after the killings, crying relatives who had gathered outside the prison had told media that some inmates who had been given bail were not released.ⁱⁱ

On 21st March, 2 detainees were killed in Anuradhapura prison after protests broke out related to COVID-19. Prisoners were fearful of COVID-19 infections due to prison overcrowding and were upset by the decision to stop visitors as family members often bring home made, nutritious food.ⁱⁱⁱ On 18th November, a detainee was killed at an overcrowded special quarantine facility for remand prisoners (Bogambara) as he and some others had tried to escape.^{iv}

These killings came as authorities responded with force to tensions arising out of detainees' fears of being afflicted by COVID-19 and related concerns, especially with massive overcrowding and congestion. Concerns had included non-separation of COVID-19 confirmed prisoners and other prisoners, restrictions on visitors and failure to provide alternative communication means with families and lawyers. Lack of nutritious food had become worse due to restrictions on visitors.

An 82-year-old inmate is reported to have died of COVID-19 in November. More than 1000 prisoners and some prison officials are reported to have tested positive for COVID-19 in November. According to media report on 29th November, more than 10% of prisoners on whom PCR tests had been conducted had tested positive^v, while the overall average of those confirming positive to PCR tests is less than 3% in Sri Lanka.^{vi}

Furthermore, unrelated to COVID-19, at least two prisoners have been reported to have been killed in Mahara and Moneragela prisons in May and November this year.^{vii}

If allegations of attempted escapes and violence by inmates are true, two key questions arise: was excessive force used by armed prison officials against unarmed inmates and what are the conditions in prisons that have led to the behavior of inmates.

2. Suicides

This year there have been around 12 suicides of prison inmates as reported in various media.^{viii} Most appear to be persons who were suspected to have used or traded in drugs and / or illicit liquor, who had not yet been judged as guilty or innocent by courts. Without adequate rehabilitation and professional support, prisoners who had been addicted to substances have struggled to survive. After three such suicides within one week, a senior prison official was quoted by media to have said that they cannot be admitted to rehabilitation centers as they are on remand and not convicted inmates. Those who committed suicide include one inmate who was reported to have been convicted. Another inmate is reported to have died by suicide in a prison hospital. In total suicides were reported from at least 5 prisons.

3. Special Task Force (STF) deployment to prisons

The Special Task Force (STF) has been sent to a number of prisons including Agunukolapalessa and Boossa. This has also led to protests from inmates. Even the Bar Association of Sri Lanka (BASL) had complained about STF harassment of lawyers visiting their clients who are detained.^{ix} Even this month the STF was deployed after clashes in Moneragela and Mahara prisons resulted in the killing of several inmates.^x STF is a Commando unit of the Sri Lankan police specializing in counter terrorism. Unlike staff of the department of prisons, STF members, who are trained in combat, are not equipped to rehabilitate and take care of unarmed prison inmates.

4. Food

In 2019 the average cost of food for a prisoner per day was Rs. 151 (approximately USD 0.82)^{xi} which is hardly enough for a day's nutritious meals. As a result, many remand prisoners depended on food brought by visiting family members and friends (remand prisoners are allowed visitors six days of the week). This had reduced drastically due to suspension of prison visits citing COVID-19.

5. Statistics and Reasons for large numbers of prisoners

The morning after the Mahara prison killings, the then State Minister of Prisons Reforms and Prisoners' Rehabilitation is reported to have stated in Parliament that prisons in Sri Lanka meant to accommodate 11,000 have about 32,000 inmates.^{xii} About 800 inmates were reported to have being held in Bogambara quarantine facility for remand prisoners meant for about 100, where one was killed last month.^{xiii} In the Vavuniya prison many inmates are reported to have been forced to sleep on the staircases.^{xiv}

According to Prison Department statistics, 20,420 (more than 70%) of those admitted as convicted persons to prisons in 2019 was due to **defaulting on fines**. Prison Department statistics indicate that 78-82% of those admitted to prisons between 2015-2019 are suspects (**remand prisoners**). Some are remanded due to their **inability to make deposits for bail** while others are remanded due to police and magistrates **choosing to remand as the norm and bail as the exception**. 58.9% of the daily average number of prisoners in 2019 were remand prisoners, with the figures for 2011-2018 being between 45-56%.

6. Delays in waiting for and completing trials

This is another reason for overcrowded prisons in Sri Lanka. Prison department statistics indicate that as of 31st December 2019, 1809 (12.3%) were awaiting trial for more than a year and 680 (4.6%) awaiting trial for more than two years. Among those awaiting beginning and completion of their trials for long time are those detained under the Prevention of Terrorism Act (PTA). In 2015, a Tamil mother, detained under the PTA was acquitted by courts as not guilty, after spending 15 years in prison and there have been other PTA detainees who were acquitted as not guilty after many years in prison. There have been persons in detention for as long as 18-19 years under the PTA without having their cases concluded. In some cases, charges were not filed for 15 years. Amongst the unconvinced long term PTA detainees is Mr. Tiron Malcom (Negombo High Court case no. HC/136/2012 and Negombo prisoner no. 5329). He was arrested in 2008 and is still in Negombo prison. He was indicted in 2012 along with another accused, but due to death of the other accused, his trial was subjected to long delays. The submission of a death certificate of the deceased accused took around 2 years and 8 months and amendment of charges took about 2 more years. Delays were also caused by the absence of police and witnesses on some days court hearings were scheduled. The trial has been presided by 9 High Court judges and Terrence's physical and mental health has deteriorated due to about 12 years in detention.

Despite the urgent need for reducing congestion in prisons, especially in context of COVID-19, in July and August, over 5000 individuals were reported to have been incarcerated.^{xv}

Amongst the unconvinced long term PTA detainees is Mr. Tiron Malcom (Negombo High Court case no. HC/136/2012 and Negombo prisoner no. 5329). He was arrested in 2008 and is still in Negombo prison. He was indicted in 2012 along with another accused, but due to death of the other accused, his trial was subjected to long delays. The submission of a death certificate of the deceased accused took around 2 years and 8 months and amendment of charges took about 2 more years. Delays were also caused by the absence of police and witnesses on some days court hearings were scheduled. The trial has been presided by 9 High Court judges and Terrence's physical and mental health has deteriorated due to about 12 years in detention.

Prisoners, unlike many others, are unable to practice COVID-19 preventive measures like self-isolation, social distancing and handwashing with soap, unless facilities are provided by authorities. With large numbers being confirmed as COVID-19 positive in November, the lives and well-being of prisoners and prison staff are at stake. They are entitled to and deserve maximum attention and support. This is particularly important in a context where oversight bodies like the Human Rights Commission, rights groups, lawyers, religious leaders, and international bodies, who defend prisoners' rights, have been constrained by COVID-19 restrictions.

7. Our appeal for immediate practical steps

We call for authorities to practice restraint and to abide by national and international laws when responding to tensions in prisons. Further we call for those responsible to be held accountable for all the killings and those who have been negligent in letting suicides happen inside prisons. We are also concerned that bodies of those killed in Mahara prison maybe cremated, which may negatively affect criminal investigations to hold those accountable. We have also brought this to the attention of Welisara Magistrate today (2nd December).

We stress the importance of addressing causes that lead prisoners trying to escape and protest. In particular, we ask that officials urgently take measures to protect prisoners and prison staff from COVID-19, by conducting PCR tests on every prisoner and prison official and reducing overcrowding through prisoner releases.

On 16th March, we, as the Committee for Protecting Rights of Prisoners (CPRP) appealed to the President, the then Minister in charge of Prisons and Commissioner General of Prisons, to take measures to avoid the spread of the virus in prisons. We suggested some practical measures, such as **early release** and **home leave** as provided for in the Prison Ordinance.

Prison Department statistics indicate that these measures have worked relatively well. In 2019, only 1 out of 200 released on “license scheme” had the license revoked and no one was taken into custody again.^{xvi} Between 2014 and 2018, out of 987 prisoners released on “license scheme”, only 6 had licenses revoked for violating conditions and only 3 had been taken into custody again (Less than 1%). In 2019, out of 446 sent on home leave, only 7 had violated the law and between 2014-2018, out of 2,724 prisoners that had been sent on home leave, only 81 (less than 3%) had violated the law.

We also requested the President to use constitutional powers and **grant pardon to some prisoners**, such as those above 70 years, those with serious sicknesses, those who had received minor punishments and those who have been unable to pay small fines.

Between 17th March and 4th April, 2961 prisoners were released on bail based on the recommendations of a special committee appointed by the President.^{xvii} However, momentum for prisoner releases seemed to have been lost after that, till news of the outbreak of the pandemic in prisons. During this time, large numbers of new prisoners were admitted to prisons. Despite the delay, we welcome media reports that indicate that Presidential Pardons are now being considered for prisoners who have served a sufficient part of their long-term sentences, prisoners above the age of 65 who have completed half or more of their sentences and inmates sentenced to life who have completed 25 years from the time of their conviction. We also welcome news of planed special remission of three months for every year or part of a year already served by the end of this month (November) for convicted prisoners who are serving long sentences, remitting of the remainder of their sentences imposed for default of settling fines.^{xviii} We note that an earlier media report had indicated a general presidential pardon for around 600 prisoners who had committed minor offenses.^{xix} We also would like to stress the importance of prisoner releases being based on transparent criteria and procedures and priority being given to the most vulnerable.

Tensions in prisons would have been less and killings and injuries could have been avoided if some measures had been taken earlier. Even the death of the 82-year-old inmate may have been avoided as well, and number of prisoners affected by COVID-19 may be much less than what it is now.

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