Call for Input - Independent Expert on the Enjoyment of all Human Rights by Older Persons

Report on older persons deprived of their liberty

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1. **What are the key human rights risks and violations affecting older persons deprived of their liberty, considering different intersectional factors?**

* *Right against torture cruel inhuman degrading treatment*

In December 2020, the Human Rights Commission of Sri Lanka (HRCSL) released the report of the first national study of prisons, conducted between 2018 and 2020. This study was the first of its kind and documented the experiences of the incarcerated across various categories. The study reveals that older persons deprived of liberty are a vulnerable group in prison with limited protections in law and practice.

The study found that treatment and conditions in prison constituted inhuman and degrading treatment and punishment for persons held in prison. Conditions of overcrowding, deteriorating prison infrastructure, poor access to resources and use of violence as a means to maintain discipline and punish were some of the factors that enabled the violation of the fundamental rights of persons deprived of liberty.

A characteristic of the prison system in Sri Lanka is that where persons are held in cells, rather than wards, since there are no toilets within the cells and cells are locked at night time, people held in cells have to use a plastic bag/bucket to relieve themselves at night time. Multiple occupants of a cell utilise the same bag/bucket and it is kept inside the cell all night until the morning, when the cells are unlocked and the newest occupant of the cell is typically made to clean the vessel.[[1]](#footnote-1)

The Commission observed that such conditions were exacerbated for older persons deprived of liberty and particularly when they served long term sentences in prison. For instance, in the B1 ward of Jaffna prison which exclusively held elderly persons and persons with disabilities, the Commission reported that the ward contained no toilets. Further, since the ward was on the upper floor of the building and persons in the cells had limited mobility due to their age/conditions, occupants of B1 ward were permanently required to relieve themselves in two large barrels, one for urine and one for faeces. The two barrels were used by all the occupants of the ward and kept in the ward itself, thereby constantly emanating a found odour. As highlighted previously, the occupants of this ward had limited mobility and therefore spent majority of the day inside the ward. Two young persons from the ward in the lower floor were responsible for emptying the barrels after both barrels reached their limit.[[2]](#footnote-2)

* *Right to the highest attainable standard of healthcare*

The HRCSL report states that that access of incarcerated persons to healthcare facilities is severely restricted, and the poor healthcare infrastructure of prisons primarily impacted older persons in detention and persons suffering chronic health conditions.

The prison study found that the hospitals in prisons were overcrowded and did not have beds, as a result of which patients would have to sleep on the ground, and contained only basic healthcare facilities. As a result, persons would have to be transferred to the nearest public hospital to access outpatient and specialised medical care. However, due to the limited number of prison vehicles for transportation and the complete lack of ambulances, persons who required a transfer to the hospital for medical appointments would have compete with the need to transfer prisoners to the court, as the same vehicles would be used for court transfers as well. The prison had to prioritise transfers to court over hospital visits which would result in patients having to wait for months before they could attend their medical appointment and receive medical care. Complaints regarding delays in accessing healthcare were one of the highest categories of complaints lodged at the HRCSL during the course of the study.[[3]](#footnote-3)

* *The right to equality and non-discrimination*

The prison study found that older persons deprived of liberty were vulnerable in the penitentiary system and suffered severe disadvantages as a result of their age. One of the key areas where this was observed was in relation to emergency situations and disaster risk management. The HRCSL prison study reported that in many prisons, older persons in the prison were all held in one ward, often along with persons with disabilities. A key concern raised by the Commission was that in the event of a disaster or emergency situation, older persons in prison who occupied the same ward would suffer most difficulties as the occupants of the ward would struggle to escape harm, let alone assist other members of the ward. Considering the present infrastructure of prisons where, due to crumbling and outdated structures and numerous fire hazards, coupled with the complete lack of a disaster management policy/protocol in every prison, an emergency situation is highly probable and in such situations the older persons and persons with limited mobility are likely to suffer the most.[[4]](#footnote-4)

* *Long term imprisonment and age*

Globally, questions are being raised about the effectiveness of the prison system in meting out justice through an inherently violent process that disproportionately affects persons from marginalised backgrounds. This rings especially true for older persons deprived of liberty that are required to serve long-term imprisonment.

Older members of society are especially vulnerable and dependent on caregivers to fulfil their basic needs. The helplessness of older persons deprived of liberty is exacerbated in prison where they risk reaching the end of their life, in conditions that would cause their mental and physical health to deteriorate further. The Commission report states that for many older persons who were deprived of liberty for most of their life, the prison ends up operating as a hospice where they were spending their final years.[[5]](#footnote-5) Where persons are physically rendered incapable of engaging in criminal behaviour due to age related conditions, and society serves no benefit from their confinement within prison walls, the reasons for detaining older persons for prolonged period of times must be re-examined. Furthermore, where older persons are released from prison after spending a prolonged period of time away from society, they may become ‘institutionalised’ and as a result be unable to lead independent lives and reintegrate into society.[[6]](#footnote-6)

1. **Please provide figures and data on older persons deprived of their liberty. Has the number of older persons deprived of their liberty increased or decreased over the past decade?**

As reported in the Prison Statistics, published by the Department of Prisons, in the year 2020, the number of persons admitted to prison on remand aged between sixty and seventy years was 2,490 while the number of persons admitted to prison on remand aged seventy and above was 432. The statistics also mention that in 2020, the number of convicted persons who were aged between sixty and seventy years was 636, two of whom were sentenced to death and two, sentenced to life. The number of convicted persons who were aged seventy and above was eighty-two.[[7]](#footnote-7)

Although the number of convicted older persons was decreasing between 2010 and 2014, it began increasing from 2015. The number of older persons on remand has generally increased over the last decade. In the year 2020, however, the number of persons in prison was lower across all categories, presumably due to the lockdowns imposed across the island and persons being released from prison following the COVID-19 pandemic.[[8]](#footnote-8)

1. **What kind of specific measures have been taken and implemented concerning older persons deprived of their liberty in the context of the COVID-19 pandemic?**

While measures were taken to reduce overcrowding in prison by releasing persons who were imprisoned for non-payment of fines and persons who were in remand for being unable to afford bail conditions, no specific measures being implemented with regards to older persons deprived of liberty were reported.[[9]](#footnote-9)

1. **Could you give us an overview on the national and local legal frameworks which prevent and protect older persons deprived of their liberty from human rights violations? Are there effective and available national monitoring and accountability mechanisms? Please provide a detailed answer with supporting information/documents.**

There are no national legal provisions that protect the right of older persons deprived of liberty in Sri Lanka.

The president of Sri Lanka, by virtue of Article 34 of the Constitution of Sri Lanka enjoys the power to pardon or commute the sentences of persons at his/her discretion. Two categories of pardons exist under this measure – special and general pardons. Special pardons are awarded to specific persons, whereas general pardons are awarded to a group of persons who fulfil pre-determined criteria, typically to mark a special national observance or religious festival. The HRCSL report mentions instances where pardons have been awarded to older persons deprived of liberty by cancelling the remainder of their sentence. However, these pardons and pre-defined criteria are ad-hoc and pardons are granted at the discretion of the president. Further, the criteria for pardons often exclude persons who have been convicted of grave crimes.[[10]](#footnote-10)

With regards to national monitoring and accountability mechanisms, the HRCSL is mandated to monitor the wellbeing of persons deprived of liberty and enjoys unfettered access without prior notice to places of detention. The HRCSL has the power to summon state officials where a fundamental rights violation complaint has been lodged by a citizen, conduct an inquiry and award compensation to the aggrieved party in the event that a violation is found. However, the HRCSL has limited resources, officers and funding and therefore is not able to conduct routine and effective monitoring of all places of detention around the island, nor pay special attention to vulnerable groups in prison. Persons deprived of liberty cannot access the offices of the Commission while being held in detention, since all except one prison in Sri Lanka do not provide telecommunication facilities for persons in detention.[[11]](#footnote-11)

Furthermore, following the enactment of the 20th Amendment to the Constitution of Sri Lanka, members of the Commission are now appointed by the President thereby seriously underming the independence of the Commission. In October 2021, the Global Alliance of National Human Rights Institutions (GANHRI) Sub-Committee for Accreditation recommended that HRCSL be downgraded to a “B” status national human rights institution as its independence and effectiveness did not comply with the Paris Principles[[12]](#footnote-12).

1. **Please share examples of good practices on how to ensure that older persons deprived of their liberty can exercise their human rights.**

In Sri Lanka documented examples of good practice to ensure older persons deprived of liberty can exercise their rights have not been noted.

A policy that has been noted, however, primarily for persons in prison who suffer long-term and terminal illnesses, is the policy of ‘compassionate release’ from prison. Section 80 of the Subsidiary Legislation under the Prisons Ordinance states that where the Medical Officer is of the opinion:

1. that the life of a prisoner will be endangered by further imprisonment, and that the prisoner's condition cannot be improved by temporary removal to a public hospital for surgical or other treatment; or

1. that the illness of a prisoner is likely to terminate fatally within a brief period, and before the expiration of the sentence, and that the prisoner is still capable of being removed and there is reason to think that the prisoner has friends or relatives able and willing to take care of him in the event of his release; or
2. that the mental condition of a prisoner will be adversely affected or endangered by further imprisonment.

In such cases, the Medical Officer is required to submit a full report to the Director of Health Services, who is then required to convene a medical board to assess the case of the person in detention and along with their recommendation, submit his own recommendation to the relevant Minister.

Although this procedure is commendable and could be utilised to release older persons who fall within the remit of the aforementioned provision, it has been criticised by the HRCSL for following a contradictory and ad-hoc process. For instance, persons in prison have alleged that the medical board is not convened despite multiple requests to that effect.[[13]](#footnote-13)

1. *Human Rights Commission of Sri Lanka,* National Study of Prisons, December 2020 – chapter: Water, Sanitation and Personal Hygiene. <https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf> [↑](#footnote-ref-1)
2. Ibid. [↑](#footnote-ref-2)
3. *Human Rights Commission of Sri Lanka,* National Study of Prisons, December 2020 – chapter: Access to Medical Treatment. <https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf> [↑](#footnote-ref-3)
4. *Human Rights Commission of Sri Lanka,* National Study of Prisons, December 2020 – chapter: Accommodation. <https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf> [↑](#footnote-ref-4)
5. *Human Rights Commission of Sri Lanka,* National Study of Prisons, December 2020 – chapter: Early Release Measures. <https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf> [↑](#footnote-ref-5)
6. *World Health Organization,* Prisons and Health, 2014. https://www.euro.who.int/\_\_data/assets/pdf\_file/0005/249188/Prisons-and-Health.pdf [↑](#footnote-ref-6)
7. *Department of Prison,* Prison Statistics, 2021. http://prisons.gov.lk/web/wp-content/uploads/2021/05/prison-statistics-2021.pdf [↑](#footnote-ref-7)
8. Ibid [↑](#footnote-ref-8)
9. ‘25,224 inmates released from prison to ease overcrowding’, *Dinamina*, 1 April 2021. (Translation of Sinhala news article) [↑](#footnote-ref-9)
10. *Human Rights Commission of Sri Lanka,* National Study of Prisons, December 2020 – chapter: Early Release Measures. <https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf> [↑](#footnote-ref-10)
11. *Human Rights Commission of Sri Lanka,* National Study of Prisons, December 2020 – chapter: Grievance Mechanisms. <https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf> [↑](#footnote-ref-11)
12. GANHRI Sub-Committee on Accreditation Report – October 2021.https://www.ohchr.org/sites/default/files/2021-12/SCA-Report-October-2021\_E.pdf [↑](#footnote-ref-12)
13. *Human Rights Commission of Sri Lanka,* National Study of Prisons, December 2020 – chapter: Prisoners with Disabilities. <https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf> [↑](#footnote-ref-13)