**Current issues and good practices in prison management – Thematic report of the Special Rapporteur on Torture**

**Submitted by:**

**Ambika Satkunanathan**

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**Introduction**

Between 2018 and 2020, the Human Rights Commission of Sri Lanka (HRCSL) conducted the first national study of prisons in Sri Lanka and the resultant report (hereinafter referred to as the prison study report), which was released in December 2020, remains the sole in-depth review of the treatment and conditions of incarcerated persons in Sri Lanka. This submission is compiled primarily based on information gathered during the prison study, and is supplemented by the author’s own research and notes gathered during her term as Commissioner for Human Rights (2015-2020). The full report of the study can be accessed [here](https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf).

1. **Causes of overcrowding in prisons:**

The Commission reported that incarcerated persons suffer inhuman living conditions in overcrowded and dilapidated facilities, where each person is allowed only a few inches of space to sleep and persons newly incarcerated often must take turns sleeping at night or sleep in the toilet. Cells with capacity for maximum two or three persons are often occupied by nine to eleven persons. As reported in the prison [statistics](http://prisons.gov.lk/web/wp-content/uploads/2023/05/prison-statistics-2023.pdf) issued by the Department of Prisons, the rate of overcrowding of the prison system was at 111% in 2022.

The prison study report detailed several reasons for prison overcrowding, including a carceral approach to minor offences, denial of bail, and limited use of alternatives to imprisonment. Rather than tackling the roots causes of overcrowding, successive governments have consistently highlighted the need to build new prisons to reduce overcrowding.[[1]](#footnote-1)

Imprisonment for the non-payment of fines:

The Department of Prison [statistics](http://prisons.gov.lk/web/wp-content/uploads/2023/05/prison-statistics-2023.pdf) highlight that nearly 64% of persons convicted in 2022 were imprisoned for the inability to pay fines.

According to the Code of Criminal Procedure of Sri Lanka[[2]](#footnote-2), when a person is unable to pay the fine imposed for certain offences, they are liable to be imprisoned for up to six months in lieu of the fine. These provisions result in persons being deprived of liberty for non-violent, minor offences simply because they do not have the financial means to pay the fine.

The prison study report found that persons were held in prison for their inability to pay fines as little as Rs. 3,000 (USD 15)[[3]](#footnote-3). It was also found in a study on drug control in Sri Lanka, that persons convicted for minor offences of drug possession who can be discharged upon the payment of a fine are often imprisoned for up to six months for not being able to afford the fine.[[4]](#footnote-4)

In cases where the person is imprisoned in lieu of payment of a fine, Section 291(4) of the Code of Criminal Procedure allows the court to permit a person to pay it in installments. Despite this, as indicated by the prison statistics, persons are imprisoned for their inability to pay fines. The prison study states that judges may be ‘disinclined to use the abovementioned provisions as that would result in the case file being kept open for longer, whereas imprisoning an offender in lieu of the fine would result in a swift conclusion of the case’[[5]](#footnote-5). This approach results in the criminalization of poverty, whereby persons are detained due to their economic deprivation. Such incarceration policies have wide-ranging consequences, including depriving the person of earning an income while in detention and adversely impact their familial relationships. The most discriminated and vulnerable in society are thereby caught in a cycle of imprisonment and poverty.

Pretrial detention and inability to furnish bail

According to the prison study report, persons were held in prolonged pretrial detention despite being awarded bail, due to the inability to satisfy onerous bail conditions. This was particularly so for persons from economically marginalized backgrounds who ‘most often were found to be unable to fulfill the monetary conditions of bail, thereby leading to the deprivation of their liberty being caused by their financial status rather than a reason established in law.’[[6]](#footnote-6)

Drug-related offences, outlined in the Poisons, Opium and Dangerous Drugs [Ordinance](http://documents.gov.lk/files/act/2022/11/41-2022_E.pdf), carry a blanket denial of bail, except in exceptional circumstances at the High Court and at the Court of Appeal for cases involving drug quantities of more than ten grams. It must be highlighted that offences under this Ordinance carry a mandatory maximum punishment of death or life imprisonment. Award of bail, under this Ordinance, is therefore not the rule but rather the exception, contrary to national law and international standards, and is not decided on a case-by-case basis. Such a blanket denial of bail for certain offences therefore leads to arbitrary deprivation of liberty. The pre-trial detention period thereby becomes a punishment even before a guilty verdict is pronounced; this too leads to overcrowding of prisons. The 2022 prison [statistics](http://prisons.gov.lk/web/wp-content/uploads/2023/05/prison-statistics-2023.pdf) highlight that nearly 108,250 unconvicted persons were admitted to prison, compared to 30,331 convicted persons.

Non-utilization of alternatives to imprisonment:

There are alternatives to imprisonment provided in the Community Based Corrections (CBC) Act (No. 46 of 1999), which states that CBC orders can be issued to persons convicted of any offence for which imprisonment is not a mandatory penalty and the penalty is less than two years imprisonment. Section 6 of the same Act outlines that the conditions of the order are stipulated based on the pre-sentence report of the person, which is prepared by the Department of CBC and submitted to the judge, which must include inter alia social history, background, details of dependents, educational/employment history and special needs of the person, and courses of programmes which s/he could attend and benefit from.

However, the prison study highlights that despite the existence of such provisions which can prevent persons from being imprisoned for minor offences, the Sri Lankan criminal justice system is ‘’pro-incarceration” and judges and lawyers often have little awareness of the provisions of the CBC Act or may be reluctant to use them as the process of requiring a pre-sentence report and issuing a CBC order takes longer than the process of imprisoning the person and closing the case[[7]](#footnote-7).

Persons from economically deprived groups who are already marginalized and victimized are rendered more vulnerable when they are imprisoned. Imprisoning people for their inability to pay fines not only results in overcrowding and adversely impacts the health and wellbeing of incarcerated persons, but also unnecessarily increases the negative social costs of imprisonment on the individual, the families of incarcerated persons, and wider society.

The United Nations System Common Position on Incarceration released in April 2021, recognizes that ‘incarceration therefore disproportionately affects and impacts the segments of society that are living in poverty or are marginalized. In some countries, people are imprisoned as a result of factors directly linked to poverty, such as homelessness or the inability to pay fines.’[[8]](#footnote-8)

Recommendations:

* Review and repeal or reform laws that penalize actions that cause no harm to society and are non-violent etc- for example, decriminalize drug use/drug dependence.
* Bail should be granted as a rule and not as an exception. and persons who have no legal representation to file for bail should be provided pro bono legal representation.
* Immediately release those imprisoned for the non-payment of fines.
* Provide alternatives to those that cannot pay fines/use existing alternatives to imprisonment.
* Raise awareness among judges and lawyers about non-custodial alternatives and legal provisions that allow persons to pay fines in installments, such as the CBC Act.
* The Department of CBC should be provided adequate resources and personnel to conduct its functions efficiently.
* Ensure living quarters adhere to international standards and provide adequate financial resources to the Department of Prisons for this purpose.

1. **Designing daily life in prisons to be focused on meaningful and productive activities, rehabilitation and reintegration, and achieving good physical and psychological health:**

Although the stated aim of the Department of Prisons is to rehabilitate persons in prison, the structural deficits in the system as well as the lack of required resources prevent successful rehabilitation of persons in prison. The rehabilitation department in every prison has a shortage of qualified personnel, funding and resources to ensure persons are able to spend their time in prison engaged in useful and meaningful activities.

At the onset, it must be highlighted that the majority of persons in prison are imprisoned for non-violent offences, including the non-payment of fines and for drug offences involving minor quantities of illicit substances. The majority of incarcerated persons, therefore, are in prison due to their socio-economic status and as such do not ***require***rehabilitation. To the contrary, it is imprisonment that causes them psycho-social harm for which they will require support post-release[[9]](#footnote-9).

With regard to rehabilitative activities provided in the prison, as outlined in the prison study report, educational and spiritual activities remain the primary tool of rehabilitation. Basic level educational and language classes were conducted in certain prisons, while religious education was provided in all institutions.

While persons in prison are allowed to complete ordinary level and advanced level examinations in prison, educational classes are conducted in an ad-hoc manner in prisons, and hence persons are left to fend for themselves in acquiring books and have to teach themselves.[[10]](#footnote-10)

Vocational training classes were provided in many prisons with the offering largely consisting of courses on masonry, brick-making, cultivation and welding. However, these courses will not enable persons to secure high-income opportunities after release and hence their potential to help released persons to become economically self-sufficient is limited. Funding for rehabilitation programs is limited, with persons in prison sharing outdated and broken equipment with oftentimes no skilled instructors. Convicted persons may also engage in ‘work opportunities’ while in prison, but there are no opportunities to earn an income while in prison as these persons are still paid the rates of Rs. 1 or 2 per day, as devised more than sixty years ago. A small number of persons may be eligible to attend work schemes outside of prison facilities for a slightly higher income, but such opportunities are not widely available.[[11]](#footnote-11) Importantly, persons are not assigned to rehabilitation activities based on their skills, interests or competencies and therefore may have limited motivation to continue these programs.

Aside from the abovementioned programs, persons have access to makeshift equipment and a small number of tattered books, but these are dependent upon external donations.

Women in prison are only able to participate in gender-stereotyped courses, such as sewing and handicraft-making, which once again carry limited potential as income sources. Persons serving death sentences are required to spend up to twenty-three hours inside their cells and wards and are therefore not able to engage in any rehabilitation programs provided by the prison.

Although ‘good behavior’ and engagement in activities in prison will assist persons when they are being assessed for early release schemes (i.e. parole), the arbitrary and discretionary nature of the early release process, without clear guidelines on how assessments are conducted and reasons why persons may be rejected for early release, results in persons being demotivated and disincentivized from participating in any activity[[12]](#footnote-12).

All these factors result in persons spending time in prison without any meaningful ways to prepare themselves for post-release reintegration. This adversely impacts their mental health and worsens the trauma due to imprisonment and time spent away from family.

The prison study report affirmed the need for an individualized system of rehabilitation where a person is assessed and a plan for their rehabilitation is devised based on their particular skills and competencies and future plans. Rehabilitation activities in prison should be based on real-world application and demands of the labour market so that persons in prison may operate on a level playing field as others once they are released.

Recommendations:

* Develop structured rehabilitative educational and vocational training opportunities for incarcerated persons taking into account their skills, interests and capacities. Qualified instructors, relevant equipment and suitable conditions of work should be ensured.
* Prepare individualized rehabilitation plans for each new entrant upon admission, after taking into account their social and incarceration history, physical and mental health, length of sentence etc.
* Expand the range of rehabilitation programs available within prison and work schemes outside prison and revise payment schemes in line with market rates.
* Ensure equal opportunities for women to access rehabilitation programs.
* The rehabilitation department within each prison should be strengthened through increasing funding and the number of rehabilitation officers, and providing adequate non-monetary resources, such as books, physical training equipment, etc.
* The gradual social re-integration of persons into society upon release from prison should be facilitated, with the help of relevant NGOs and community organizations, through a transitional/half-way house system where persons can be assisted with food, shelter and employment for an interim period.

1. **Challenges and innovations for providing mental health provision, including for different groups of prisoners such as those with pre-existing psychological issues, victims of torture, persons with neurodiverse conditions etc:**

Access to medical healthcare in prisons in Sri Lanka[[13]](#footnote-13) is poor and inefficient, with only some prisons being equipped to provide primary medical care while any other form of treatment requires persons being transferred to the area public hospital. Due to the lack of resources and funds, patients face severe delays in attending medical appointments outside the prison.

The ‘Prison Hospital’ inside prisons is often in a dilapidated condition, with limited medical personnel available onsite. Although doctors visit prisons during the day, doctors are on-call rather than on-site at night time, requiring patients suffering symptoms to wait until the morning to receive medical care as prison officers exercise discretion in summoning doctors to the prison.

Doctors themselves are reported to discriminate against incarcerated persons by asking them questions about their case and offence, with the offence determining the treatment they receive. For instance, persons incarcerated for drug offences stated they were discriminated against and subjected to derogatory remarks once their offence was known.

With regards to mental healthcare, while certain prisons conduct ad-hoc psychiatric clinics where persons are periodically visited by psychiatric consultants who may prescribe requisite medicine, very few prisons have trained in-house counselors to assist persons suffering mental health disorders. Due to the lack of mental healthcare facilities in prison, persons who may have been victims of crime and subjected to abuse or sexual and gender-based violence, would not be able to access counseling and psychological services that they require[[14]](#footnote-14).

Poor conditions of the prison and the routine use of violence adversely impacts the mental health of persons in prisons, especially as they are already susceptible to poor health due to the limited medical infrastructure in prison, the lack of meaningful activities and separation from family.

Recommendations:

* At least one resident Medical Officer and psychiatrist should be assigned to every prison and be onsite during out of office hours and for emergencies.
* Each prison should also have at least one qualified counseling officer competent to deal with persons who require psychological services.
* Medical personnel should be trained to deal with incarcerated persons and sensitized on working in such conditions and on suicide prevention.
* Persons with mental health illnesses should be diverted from the prison system where their health conditions may worsen and provided care in facilities that provide appropriate mental health care.
* Access to voluntary harm reduction mechanisms for persons who use drugs should be provided in prison as well as outside prison; persons who use drugs and dependents should be diverted away from the criminal justice system and provided community-based drug voluntary treatment and care.

1. **Use and impact of solitary confinement:**

The Commission reports that the use of physical violence is routine and used as form of punishment for committing offences inside prison as well as for maintaining discipline and order in prison.

Prison officers reportedly perpetrate violence for a range of reasons but primarily inflict violence on persons from impoverished backgrounds. Persons can be beaten by various instruments, such as clubs and wires, in the presence of others, often while kneeling or being hung up by their wrists. Violence is seen as the primary means of maintaining order inside prison, which may be why persons in prison reported being beaten for inconsequential reasons. Prison officers can behave with impunity as they are rarely sanctioned for inflicting violence.[[15]](#footnote-15)

The use of solitary confinement is also a common punishment in the prison system. The prison study report states that cells where persons are held during solitary confinement are referred to as ‘punishment cells’. Punishment cells were found to be dark, damp and less-ventilated, often without toilet facilities, thus exacerbating the conditions of the punishment.

The impact of the use of violence and solitary confinement is the mental and physical distress caused to persons who are subjected to such treatment. The fear of reprisals for reporting violence and the lack of grievance mechanisms within prisons can exacerbate mental distress, especially in a situation where persons are already vulnerable to mental health issues due to the living conditions and treatment within prisons. As reported in the study, of the total respondents, 60% of men and 55% of women stated they had experienced depression, anxiety and sadness to a level where it interferes with their daily tasks and everyday functioning.[[16]](#footnote-16)

Recommendations:

* A zero-tolerance policy against physical violence should be implemented and allegations of torture and the use of undue or excessive force by officers other than for reasons such as self-defence or to protect others from violence etc, should be inquired into by relevant authorities.
* The Attorney General’s Department should prosecute officers under the Convention Against Torture Act (the Sri Lankan law that criminalizes torture by public officials), where appropriate.
* Training for prison officers on fundamental rights, human rights, Nelson Mandela Rules, as well as the modern practices with regard to the treatment of incarcerated persons and their social reintegration should be provided periodically.
* Training in non-violent means of diffusing and managing conflict and violence, including on the use of force only to the extent required in self defence or to protect others being subject to violence should also be provided regularly.
* Establish safeguards as well as checks and balances regarding the use of force, such as reporting and recording events where force was used to restrain incarcerated persons.
* Incarcerated persons should be ensured full confidentiality and protected from reprisals when complaining to senior management about prison officers. Immediate inquiries should be initiated where persons complain of reprisals and immediate protection should be provided against further reprisals.
* Judges and area magistrates should conduct regular visits to prisons, conduct inspections and hear grievances of incarcerated persons.
* Incarcerated persons should be provided the means to lodge complaints to external mechanisms, such as the Human Rights Commission of Sri Lanka, through confidential communication and correspondence facilities.

1. **Preparing for the next pandemic (what worked and what didn’t in COVID-19 responses to prison management? Any negative consequences of those measures?):**

The most positive measure taken by the government with regards to the prison system during the pandemic was the release of persons[[17]](#footnote-17) imprisoned for minor offences, non-payment of fines and for not being able to afford bail, as this reduced the number of people in prison and minimized the risk of a rapid spread of COVID. News reports also indicated that persons were segregated if they were ill or had symptoms.

However, the lack of testing facilities in prison and the poor health infrastructure of the prison system did not allow rapid testing and tracing to be conducted, which led to an outbreak of COVID-19 in several institutions, as well as deaths of incarcerated persons[[18]](#footnote-18).

Anxiety and tensions due to COVID outbreaks and the lack of testing and treatment facilities in prison led to violence in three prisons in 2020, resulting in several deaths and injuries[[19]](#footnote-19). In November 2020, at Mahara Prison, at least eight persons were shot and fifty others injured when prison officers responded by shooting to control the crowd[[20]](#footnote-20).

The pandemic had the effect of highlighting the fatal consequences of everyday systemic dysfunctionalities in prison, including the severe lack of prison officers, lack of training in non-violent means of de-escalating conflict and crowd control, poor healthcare facilities, the lack of hygiene and sanitation mechanisms in prison, etc.

Recommendations:

A comprehensive strategy and contingency plans to prepare for the next pandemic should be devised after consulting with all stakeholders and independent experts, and prison officers should be trained in executing such strategies.

The healthcare infrastructure of prisons should be improved to match the standard of care available outside prison, with the inclusion of quarantine facilities to prepare for an outbreak of illness. General prison conditions, including access to water and sanitary facilities, to maintain cleanliness and minimize the rapid spread of germs and bacteria, should be improved.

1. **Responding to climate-change effects on prisons and prison populations and climate-proofing prison management and conditions of detention:**

As highlighted above, prisons in Sri Lanka are overcrowded, which is exacerbated by the poor state of prison infrastructure. Wards and cells are poorly ventilated, have limited natural light and often infested with rats and other pests. Most prisons were built several decades ago and have not been repaired since, which has resulted in cracked walls and roofs that allow rainwater or drainpipes to flood the cell. Several senior officers highlighted the risk to health of incarcerated persons due to crumbling walls, roofs and staircases, as well as the fire hazard posed by low quality building materials.

Due to changing weather patterns in Sri Lanka, and the increase in rainfall and subsequent flood, the prisons remain at risk of being severely impacted. The prison study affirmed that in the event of a natural disaster, since the prison system does not have a disaster-risk management strategy in place, the risk to life and injury remains catastrophically high, with persons with disabilities and the elderly being most vulnerable.

Recommendations:

* Adopt a comprehensive Disaster Risk Management Plans for each prison, and prison staff and incarcerated persons should undergo regular training on responding to both natural and manmade disasters.
* Undertake an assessment of every prison to understand how it can be climate-proofed and the repairs and refurbishments that are necessary to minimize/mitigate the impact of changing weather patterns on prison facilities and conditions of detention.

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17. <http://www.colombopage.com/archive_20A/Apr05_1586097044CH.php> [↑](#footnote-ref-17)
18. <https://www.newsfirst.lk/2021/07/28/3586-people-have-died-of-covid-19-since-the-15th-of-april-2021/> [↑](#footnote-ref-18)
19. <https://www.amnesty.org/en/latest/press-release/2020/11/sri-lanka-prison-deaths-must-be-investigated-amid-growing-covid19-unrest/> [↑](#footnote-ref-19)
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