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An unofficial translation of the Executive Summary and the chapter on Prisoners Held Under the Prevention of Terrorism Act from the report of the National Study of Prisons published by the Human Rights Commission of Sri Lanka.

Sri Lankan Collective against Torture

Publication of Executive Summary and Table of Recommendations of the HRCSL's Study on Prisons conducted in 2018

The Human Rights Commissions of Sri Lanka initiated a study of the Sri Lankan prison system in 2018 to understand the compatibility between our current prison system and Sri Lanka's human rights obligations and to identify the underlying issues that impact the human rights of prisoners in Sri Lanka. The Nelson Mandela Rules (formulated by the United Nations Office on Drugs and Crime) was the benchmark for the review.

The study was done between April and September 2018. This included prison inspections in twenty correction institutions including prisons, remand prisons and work camps and interviews with inmates, prison officials and stakeholders such as government institutions and other independent and non-governmental groups.

The findings and recommendations address the knowledge gap and increase general understanding of the prison system. We also hope to highlight shortcomings of the framework. It is hoped the findings will lead to the formulation and implementation of better practices and policies, to protect and promote prisoners' rights and strengthen the correctional system, including focusing on issues the officers face.

The Commission appreciates the fact that that officers of the Prisons Department welcomed and supported the study. At their request, HRCSL conducted a series of human rights awareness programmes for prison officials.

The three key findings of the study are:

- the system is overcrowded and under resourced;
- the prisons system emphasises the correctional/ punitive aspect rather than the preferred correctional/ rehabilitative model;
- officials are well aware of the shortcomings and are open to change.

The last gives the Commission hope that although the system is overburdened, if effort is placed to reduce inmate numbers and the focus shifts to a rehabilitative process, with adequate resources for the same, our system could achieve the required standards.

In this regard, we believe the Prisons Department's new Strategic Plan 2021 – 2025 "A Right Based Correctional System for a Safer Society" is a step in the right direction.

The HRCSL is happy to publish the Executive Summary and Collation of Recommendations of the study today.

25 November 2020 Colombo

 $^{^{\}rm 1}$ http://prisons.gov.lk/web/wp-content/uploads/2020/10/Prison-reform-implemantation-plan-2021-2025.pdf

Prison Report - Table of Content

Executive Summary	7
Prisoners Held Under the Prevention of Terrorism Act	39
Table of Recommendations	69

Executive Summary

Overview

The Human Rights Commission of Sri Lanka initiated the first country wide 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 special² prisoners to the general hospital. Medical transfers are hence not always

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² High risk prisoners or prisoners requiring higher security

prioritized by the Superintendent and the medical officers' referral is often overridden in favour of logistical efficiency rather than symptom severity.

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 primary facilitated for followers of Buddhism. Other methods, such 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 parties³, 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

20

³ 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 Jailor, a Senior Welfare Officer, a Disciplinary Jailor 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 the 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

Prison Study by the Human Rights Commission of Sri Lanka

instead focuses only on probations issues related to children. Hence, at present, there is no designated entity tasked with undertaking and managing adult probation.

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 1979¹ (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 PTA², 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.³

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

Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979, as amended by Act Nos. 10 of 1982 and 22 of 1988.

Human Rights Commission of Sri Lanka, 'Public Statement' (22 June 2016) http://hrcsl.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) accessed 21 November 2018.

The Constitution of the Democratic Socialist Republic of Sri Lanka, art 13(2).

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:

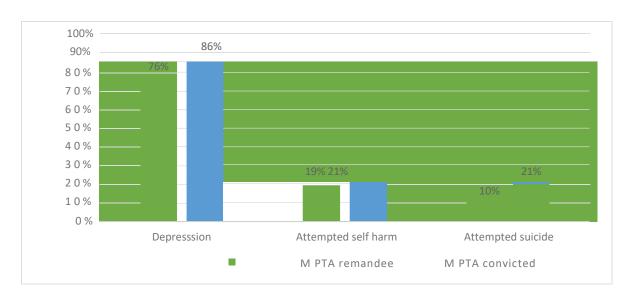
"Sometimes I have to fast and do tests. Then for the next clinic date I have to take the report. On the next date I am required to be at the clinic by 0830h. but I have never ever reached the hospital by 0830h. Sometimes when they ask me to fast for twelve hours and come for tests, by the time I reach 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.⁴

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 questionnaires⁵.

Graph 20.1 – Male PTA inmate respondents on depression attempted self -harm and attempted suicide



⁴ For a comparison of the conditions of PTA inmates and other special category prisoners, please refer chapter Access to Medical Treatment.

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%6
Up to 1 year	5%	7%7
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.

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.

⁷ ibio

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.⁸

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

⁸ Department of Prisons, Prison Statistics of Sri Lanka, 2018, p 92.

week, things have become even worse.9

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.

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

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.

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".

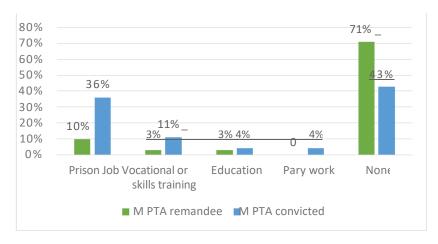
PTA inmates also engage in hunger strikes to draw attention to common issues they face, such as long delay of trials. The Commission has also observed that when PTA inmates engage in hunger strikes for issues related to their cases, they give prior written notice to the prison, which they state is done 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 development¹⁰



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

 $^{^{10}}$ 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.

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 that 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 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. A convicted PTA prisoner in NMRP stated thus:

"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

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.

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 Board¹²

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.

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

For a detailed discussion on Home Leave and License Board schemes, please refer chapter Early Release Measures.

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 remand¹³.

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

For a detailed discussion, please refer chapter Entrance and Exit Procedure.

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:

"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.¹⁴

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.

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

¹⁴ 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.

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

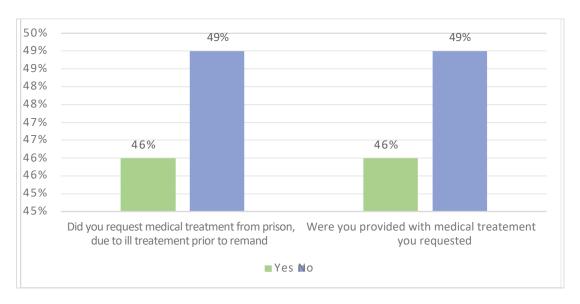
As discussed in the chapter Entrance and Exit procedure, SMR 7(d) requires prisons to record any visible injuries and complaints about prior ill treatment, upon admission. Prison authorities are thus expected to inquire from PTA inmates, upon admission to prison, about any ill treatment or torture they 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 detention¹⁵



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.

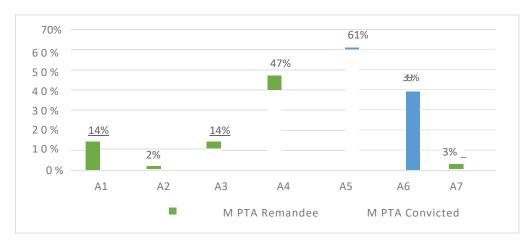
6. Legal and judicial proceedings

"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

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
- A6 On appeal 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

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. 16 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 clients in

Code of Criminal Procedure Act No. 15 of 1979, s 260.

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 prisoners¹⁷, 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

 $^{^{\}rm 17}$ $\,$ 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.¹⁸ 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 DOP¹⁹, 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 prisoners²⁰

Less than 6	6 months - 1	1 year – 5 years	5 years – 10	10 years – 15
months	year		years	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 a thirteen year period in remand.²¹ Many convicted inmates related similar scenarios where

¹⁸ ICCPR 1966, art 14.

¹⁹ As of 31 January 2018, DOP Statistics Department

²⁰ As of 31 January 2018, DOP Statistics Department

The Commission gathered this information based on the complaints received from PTA detainees prior to

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.²² 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.

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

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.

²² For a detailed discussion, please refer chapter Legal and Judicial Proceedings.

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 voluntarily²³ is on the prosecution, as affirmed by case law²⁴.

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]."

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

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.'

²⁴ The Queen v Rev. H. Gnanaseeha Thero and 21 Others (1968) S. C. 66/67 (Western Circuit) – M.C. Colombo, 34638/A.

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 pretrial 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 defense²⁵, 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.²⁶

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 in 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:

"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."

²⁵ ICCPR 1966, art 14 (3)(b)

The Constitution of the Democratic Socialist Republic of Sri Lanka, art 25.

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 they 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.
- 4. 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.
- 5. Grant bail to detainees who have been in remand for an extended period of time.

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 level, supported by all stakeholders including officials from the selected prisons and the Department of Prisons. As a Lanka. The study adopted both qualitative and quantitative methodologies and included extensive data collection at the groundcomprehensive study on prisons in Sri Lanka, this study focuses on both physical and social dimensions of prisons and inmates, 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 the meaning of incarceration and correctional systems as well as the legal framework within which the prison system exists. divided into three broad sections, focusing on specific implementation mechanisms. They are:

- 1. Improve physical conditions and administration of prisons
- . Enhance the welfare of prisoners
- 3. Reform the criminal justice system

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 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 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

N	Category	Areas of concern	Recommendations
,	, , ,		
1.1	Accommodation		
1.1.1		Overcrowding	• 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	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.

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1.1.3	Distance from families and household	 Accommodate prisoners, as much as possible, close to their families to enable regular family contact and social reintegration. 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	 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 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.

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		• 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	 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. 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. 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	Subject living conditions of prisoners to greater oversight and scrutiny, without which amounts to torture, cruel, inhuman and degrading treatment and punishment.

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1.2	Food		
1.2.1		Quality of food	 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
			region as well as the nutritious value of the meals, instead of assigning inexperienced prisoners to prepare meals.
			 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	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.

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1.2.3		Kitchen inspection and control	 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	 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	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 bowsers.

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ı		• 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	• Allow prisoners the chance to bathe twice a day if they wish
	minimize the spread of	and allocate sufficient time to wash their clothes and the use
	germs and illnesses	toilets.
		 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

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	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.
	 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.

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1.4	Entrance and Exit		
	Procedure		
1.4.1		Admission procedure	• 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.
			 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.

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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.
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.

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1.5	Access to Medical		
	Treatment		
1.5.1		Medical facilities	 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. Establish a roster for consultants from the nearest General Hospital.
1.5.2		Training and sensitizing medical staff	 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	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.

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		• 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
		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.
1.5.4	Mental health	 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.

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			 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	• 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.
			 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.

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1.6.2	Proper monitoring of receiving food and parcels from outside	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	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

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			 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	 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, following International standards, such as the Standard Minimum Rules. 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 Jailor. 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 Jailor or Superintendent of Prisons on a daily basis, without the risk of interference or interception by other prison officers,

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External grievance mechanism			their duties to ensure that the requests and grievances of
External grievance • mechanism			are forwarded to the relevant
External grievance mechanism			authorities.
•	1.7.2	External grievance	Establish an impartial and independent mechanism to address
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			of Justice which must not be opened by prison officers.

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• 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
directly without the intervention of the prison authorities to
safeguard transparency of the process
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

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			be shared with the Department of Prisons, Ministry of Justice
			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	Provide relevant training for prison officers to shift their
		prison officers	understanding of incarceration from a purely punitive
			measure to a rehabilitative process that seeks to ensure the
			successful social reintegration of prisoners.
			• 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

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			by the relevant entities to inquire into allegations made by prisoners against officers.
1.8.2		Conducive working conditions of prison officers	 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 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	 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

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		 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	 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	 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	• Improve overall conditions of the prison, specifically working conditions of prison officers, so that they refrain from ill-treating prisoners and justify such acts.

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			• 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	Adopt and implement policy directives and guidelines on the steps to be followed in an event of a death, such as calling for a death, such as calling for a death.
			separating prisoners who are suspects/witnesses from others
			and from each other etc., and all prison officers and prisoners
			notices, drills etc.
			• Standardize the process of investigating a death in prison
			according to the Minnesota Protocol.
			• 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

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		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	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	 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. 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

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		minimize the risk of evidence tampering by prison officers, or
		even prisoners.
1.10.4	Procedures and	Maintain vigilance on prisoners who complain of pre-
	mechanisms to deal with	imprisonment violence and produce them before Judicial
	deaths due to violence in	Medical Officers to provide necessary treatment and proceed
	prison	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.
		• 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.
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1.10.5	Procedures and mechanisms to deal with	• Ensure during the orientation programme that prisoners who
		are recuired over wirefulled are aware or available mely and
		support unough menuned officers.

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deaths due to suicide in	• Implement mechanisms to identify prisoners who are at risk of
prison	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
	interest in activities or relationships, repeated refusal to take
	medication or a request for an increased dose of medication.
	 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

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		 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	 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. 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 prisoner's from one prison to another, to avoid delays in treatment of physical or particularly psychological illnesses, which could contribute to unnatural deaths, such as enviside.

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1.10.7		Procedures and	• Implement recommendations to reduce deaths in prison due
		mechanisms to deal with	to work place accidents as set out under Chapters on Prison
		deaths due to accidents	Work and Accommodation.
		in the prison	
1.11	Challenges Faced		
	by the Prisons		
	Administration		
1.11.1		Remuneration and work	Create public awareness on the value of the work undertaken
		conditions of prison	by prison officers and their services to the country to boost the
		officers	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.
			 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 interims 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.

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		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	Revise recruitment policies and adhere to the strict
	procedure for prison	recruitment and selection processes paying attention not only
	officers	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
		prisoners and prison officers, which in turn would result in
		more responsive interventions and decisions that address
		existing needs and concerns.
		 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.

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of prison anism to uption staff	1.11.3	Training and	Provide prison staff with the proper understanding of their
• • • • • • • • • • • • • • • • • • •		development of prison	role in the prison as rehabilitative and not as punitive.
Vetting mechanism to prevent corruption among prison staff		staff	Conduct training programmes for both hard and soft skills that
Vetting mechanism to prevent corruption among prison staff			are essential when dealing with offenders, technical skills such
• Vetting mechanism to prevent corruption among prison staff			as the use of technology and documentation processes to
• Vetting mechanism to prevent corruption among prison staff			ensure that they play a dynamic role in the management of
Vetting mechanism to prevent corruption among prison staff			prisons rather than a static one, and also include sessions in
• Vetting mechanism to prevent corruption among prison staff			fundamental rights, human rights, Standard Minimum Rules,
Vetting mechanism to prevent corruption among prison staff			as well as the modern practices with regard to the treatment of
Vetting mechanism to prevent corruption among prison staff			prisoners and their rehabilitation.
• Vetting mechanism to prevent corruption among prison staff			Provide training in the appropriate use of force to prevent
• Vetting mechanism to prevent corruption among prison staff			abuse, torture and violence, including techniques of using
• Vetting mechanism to prevent corruption among prison staff			minimum force to restrain and non-violent methods of
• Vetting mechanism to prevent corruption among prison staff			handling inmates.
• Vetting mechanism to prevent corruption among prison staff			Conduct biannual or annual training for prison guards who
Vetting mechanism to prevent corruption among prison staff			carry firearms on the use of weapons as well as the protocols
Vetting mechanism to prevent corruption among prison staff			to be followed when using firearms.
Vetting mechanism to prevent corruption among prison staff			Provide suicide prevention training that includes areas such as
Vetting mechanism to prevent corruption among prison staff			why correctional environments are conducive to suicidal
Vetting mechanism to prevent corruption among prison staff			behaviour, potential predisposing factors to suicide, high-risk
Vetting mechanism to prevent corruption among prison staff			suicide periods, warning signs and symptoms, components of
Vetting mechanism to prevent corruption among prison staff			the facility/agency's suicide prevention policy as well as mock
Vetting mechanism to prevent corruption among prison staff			drills.
	1.11.4	Vetting mechanism to	Conduct background checks on candidates who have applied
		prevent corruption	for vacancies in the prison system to avoid recruiting persons
human rights violations during previous employment.		among prison staff	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	Formulate a legal framework setting out the duties and
		responsibilities of the prison police.

2. Enhance the Welfare of Prisoners

	4. Elliance the Wenale of Fisoners	113011613	
No.	No. Category	Areas of concern	Recommendations
2.1	Rehabilitation of Prisoners		
2.1.1		Education and vocational training programmes	Develop a structured system of educational opportunities for prisoners in line with the different levels of education the prisoners possess.

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		Provid	Provide qualified educators, equipment and building facilities to
		foster	foster a culture of education within the prison.
		 Provid 	Provide vocational training in useful and income-generating
		trades	trades according to the current needs of the market.
		 Make a 	Make available a range of vocational training for prisoners to
		choose from.	e from.
		• Engage	Engage instructors consisting of permanent and additional part-
		time o	time or voluntary instructors in every prison.
		 Expand 	Expand the avenues to sell the products made by prisoners
		during	during vocational training, particularly to state entities.
2.1.2	Religious and	Provid	Provide equal opportunity, adequate and equal access to all
	cultural activities	prison	prisoners who wish to engage in religious activities while
		respec	respecting those who do not wish to participate in such practices.
		 Provid 	Provide equal opportunities to participate in cultural and other
		festivit	festivities regardless of their ethnicity.
		• Facilita	Facilitate the celebration of all religious festivals in prisons.
2.1.3	Engagement with the	Provid	Provide an adequate number of books and newspapers and
	outside world	means	means of being informed of current affairs such as TVs and radios.
		• Engage	Engage the community and other organisations to expand
		rehabi	rehabilitation programmes to encourage interaction with the
		outside	outside world which would enable the successful social re-
		integra	integration of prisoners.
		 Invite 	Invite well-known personalities and motivational speakers to
		addres	address the prisoners.
2.1.4	Other rehabilitation	 Provid 	Provide adequate sports and physical training equipment.
	programmes		

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2.1.5	Evaluations of	 Provide equal opportunities in rehabilitation to female prisoners.
	rehabilitation	 Monitor the effectiveness and the impact of rehabilitation
	programmes	programmes periodically.
2.1.6	Individualized	 Prepare a rehabilitation plan for each prisoner upon admission,
	rehabilitation and	after taking into consideration their social and criminal history,
	release care plan	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	 Revamp the Department of Prisons to reflect rehabilitation as its
	Rehabilitation and	main goal by providing sufficient cadre positions for
	welfare	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.
		• 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.

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• • • • •	2.2.1		Types and	Provide work that is useful in nature and under conditions that
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Equipment and personnel for work Health and safety			confidential information on prisoners by digitizing information
Equipment and personnel for work Health and safety			management system or recruiting more prison officers.
Equipment and personnel for work Health and safety			 Increase access to post release support by providing a budget
Equipment and personnel for work Health and safety			allocation for the provision of tools and equipment to released
Equipment and personnel for work Health and safety			prisoners who successfully complete their vocational training
Equipment and personnel for work Health and safety			courses in prison and wish to pursue relevant opportunities upon
Equipment and personnel for work Health and safety			release.
Health and safety •	2.2.2	Equipment and	 Provide funding to procure adequate industrial equipment,
Health and safety			machinery and material to ensure maximum productivity, as well
Health and safety			as safety of the prisoners at work.
Health and safety			• Enlist qualified trainers/instructors in work parties, including
Health and safety			specialized external entities to provide effective training to
Health and safety			prisoners, from which they can benefit after their release.
 for work. Ensure prisoners undergo a medical evaluatransferred to an open camp and communic prison the Medical Officer's recommendation. Visit and monitor prisoners at work by identify those who find it difficult to work. Renovate workshops and other working planelth and safety of prisoners, and prioritize supply of drinking water and sanitation facilise provide training to every prisoner employed work place safety. Promote actively the use of safety equipmer instructions in every work party. 	2.2.3	Health and safety	 Comply with the recommendations of Medical Officers on fitness
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			• 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	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	Reconceptualize and strengthen the existing early release
		procedures	measures in the Sri Lankan penal system.
			 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.

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			• 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	Death		
Row			
2.4.1		Policy on death	 Propose to abolish the death penalty.
		penalty	• 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.

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			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	Ensure that national security/ Anti-terror law complies with
		guidelines for	International Human Rights standards by repealing the PTA.
		detention under the	Ensure that safeguards are in place for a remandee to move from
		PTA	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	Use alternative non-custodial correctional methods for persons
		and guidelines	under eighteen years of age and not be held in prison and detain

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		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	• Ensure all Young Offenders irrespective of gender, ethnicity,
	Education	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 that Young Offender have the option of continuing
		their disrupted education, according to their personal levels of
		education and literacy.
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			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	Recruit personnel with relevant and recognized qualifications in
		and personnel	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	• Ensure that foreign nationals do not suffer discrimination on the
		and guidelines	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.

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	•	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.

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2.7.2		Repatriation	•	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 should not be subject to political whims, but should
				be implemented as a matter of course as part of an established
				procedure.
			•	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	•	Ensure that female prisoners have access to a separate, fully
		healthcare facilities		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.

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		 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.
		• 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	• 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.

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			•	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	•	Make provision for effective childcare facilities including: the
				service of paediatricians in prisons, appropriate meals to
				children, nurseries 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.
			•	Expand the pre-school system at WCP to all prisons in the system.
2.8.4		Female prison	•	Issue a circular specifying the procedure to be adhered to when
		personnel		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			

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2.9.1	Facilities	 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.
		 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	 Encourage Home Leave for disabled and elderly prisoners,
	rehabilitative	particularly where such prisoners have family willing to care for
	programmes	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	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	 Prohibit incommunicado detention and provide detainees access to
		detention	contact with family, legal representatives and independent

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			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	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		
	Kepresentation		
3.2.1		Legal aid system	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.

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			• 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	• Provide the names, contact details and credentials of criminal
		representation	lawyers to prisoners, especially foreign nationals, by the prison
			administration, to improve the access of remandees to legal
			representation.
			• 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		
	rioceedings		
3.3.1		Bail and bail	 Issue guidelines to enable the setting of reasonable bail conditions
		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.

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			Allow persons who cannot afford fines to pay them in installments,
			instead of imprisoning them.
3.3.2		Delays in judicial	Conduct a study of judicial proceedings at the Magistrate Court to
		proceedings	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	• Strengthen legal assistance to ensure equal access to legal
		other support in	representation for prisoners and the Department of Prisons to seek
		courts and judicial	the assistance of voluntary organizations in this regard.
		proceedings	• 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 to 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		

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3.4.1	Policy and guidelines	Implement a zero-tolerance policy on violence within the
	on prevention of	criminal justice process and conduct inquiries by both internal
	violence in the	and external entities into allegations of violence against prison
	criminal justice	and police officers and take strict action.
	process	Initiate action under the Convention Against Torture Act against
		officers where there is adequate evidence.
		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.

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3.5	Non-custodial		
	Measures		
3.5.1		Alternatives to	Revise and modernize penal policies and legislation to give
		imprisonment	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
			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.
			 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.

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 Strengthen the Departm 	Strengthen the Department of Community Based Corrections Act
No 46 Of 1999 by revis	No 46 Of 1999 by revising its cadre, increasing the number of
Community Based Corr	Community Based Corrections Act No 46 Of 1999 officers, and
allocate the required fir	allocate the required financial resources for the recruitment of
additional cadre, as well	well as administrative and logistical
facilities.	
 Increase awareness on (Increase awareness on Community Based Corrections Act No 46
Of 1999and its importa	Of 1999and its important role in rehabilitation and restoration
in order to reach com	in order to reach communities and enable offenders to fully
understand how Comm	understand how Community Based Corrections Act No 46 Of
1999 is different from imprisonment.	nprisonment.
 Establish a separate nat 	Establish a separate national entity to implement probation for
adult offenders and mon	adult offenders and monitor their adherence to the conditions of
their probation.	
 Communicate to Judici. 	Communicate to Judicial officers and legal practitioners the
possible use of the Probation of Offenders	obation of Offenders Ordinance as an
alternative to imprisonment.	nent.
 Encourage courts to be 	Encourage courts to be gender sensitive and take into account
the particular circumsta	the particular circumstances of women incarcerated in the Sri
Lankan penal system, ¹	Lankan penal system, who are caught in a cycle of poverty,
domestic violence and criminal behaviour.	riminal behaviour.
 Promote Community Ba 	Promote Community Based Corrections Act No 46 Of 1999 for
primary caregivers and s	primary caregivers and sole breadwinners to break the cycle and
ensure their children are not drawn into it.	e not drawn into it.
 Treat substance depen 	substance dependency as a public health issue with
concerned persons pro	concerned persons provided access to treatment, counselling
and temporary shelter, i	and temporary shelter, if required and minor breaches of the law

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by those who are drug dependent should be addressed through alternatives to incarceration as much as possible.

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