

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Special Rapporteur on the right to food; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL LKA 1/2021

29 January 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention; Special Rapporteur on the right to food; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 44/5, 42/22, 32/8 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged human rights violations in relation to prison conditions and management in Sri Lanka. This includes information received on alleged prison overcrowding, high levels of COVID-19 in prisons, incidents in prisons reportedly leading to the killings of prisoners including in Anuradhapura, Bogambara and Mahara prisons and suicides in detention.**

According to the information received:

Prison overcrowding and COVID-19

Prisons across Sri Lanka are overcrowded. The State Minister of Prison Reform and Prisoners' Rehabilitation has stated in Parliament that the prison capacity in Sri Lanka is 11,000, and the prison population 32,000. This has increased the risk of spread of COVID-19 in prisons. More than 1000 prisoners and some prison officials had tested positive for COVID-19 as of November 2020, and one prisoner died. Reportedly, 10% of prisoners who received tests at that time were testing positive for COVID-19, compared with 3% of the rest of the Sri Lankan population. Prisoners testing positive for COVID-19 have not systematically been separated from other prisoners.

Oversight bodies have also had limited access to prisons due to COVID-19 restrictions. Additionally, prison visits have been suspended, which has affected the ability of prisoners to access adequate food as families and other visitors usually bring food to prisoners to supplement the limited food provided by the prison authorities which is not sufficiently nutritious. No alternative means for prisoners to communicate with their families have been provided.

Official statistics indicate that more than 70% of the individuals convicted and sentenced to prison in 2019 were jailed for defaulting on fines. Around 80% of those admitted to prisons between 2015 and 2019 were suspects on remand either due to an inability to make deposits for bail or due to the approach of police and magistrates, using remand as the norm rather than

exception.

Urgent measures are needed to reduce prison overcrowding and protect the health of detainees.

A license and home leave scheme has been in place for a small number of prisoners – the prison statistics indicate that between 2014 and 2018, of the 987 prisoners who participated in the license scheme only six had their licenses revoked and only three had to be taken into custody again. In 2019 of the 446 prisoners given home leave, only seven violated the law. Extending these schemes, which are provided for in the Prison Ordinance, would also help reduce overcrowding in prisons. Additional presidential pardons could also be considered to reduce prison overcrowding, such as to those with serious health issues and those who received short prison sentences.

Overcrowding is also caused by delays in completing trials. As of 31 December 2019, 12.3% of individuals waited for a trial for more than a year and 4.6% for more than two years. Individuals detained under the Prevention of Terrorism Act (PTA) face particularly long delays. There have been cases of trials taking up to 18 or 19 years to conclude.

Reportedly, thousands of prisoners have been released since the start of the pandemic. Between 17 March 2020 and 4 April 2020, 2961 prisoners were released on bail, following the recommendations of a special committee set up by the President. Additionally, there were further releases in December 2020. However, the exact numbers of individuals released and the criteria under which individuals were chosen for release are unclear. Additionally, individuals have continued to be admitted to prisons. The Government had planned to reduce the prison population by 30% by the end of April 2020. However, this was scrapped in September 2020. Prison officials as well as prisoners are also at risk due to the current situation.

Incidents in prisons leading to killings of prisoners

On 21 March 2020, protests broke out in Anuradhapura prison, concerning the overcrowding of the prison, increased risk of COVID-19 infections and the decision to halt prison visits including of prisoners' families and lawyers. Two prisoners were killed.

On 18 November 2020, a prisoner was killed in a special quarantine facility after the prisoner and others tried to escape. The facility, which is for remanded prisoners and is located in Bogambara, was holding 800 prisoners in a facility meant for around 100. At the time, 100 prisoners had already tested positive for COVID-19.

On 29 and 30 November, a protest at Mahara Prison, calling for the authorities to intervene to prevent the spread of COVID-19 in the facility, resulted in the deaths of 11 prisoners and injured 106 others and several prisoner officers. The prison has a capacity of 1000, and was housing 2500 prisoners. Reportedly, 176 prisoners and 7 prison officials had tested positive for COVID-19.

A team from the Criminal Investigation Department is investigating the incident and has concluded that the deaths and injuries were caused by shooting. Reportedly, prison guards opened fire at inmates, including those who were fleeing. A five-member Committee was also constituted to investigate the incident. In their interim report, they recommended the release of prisoners charged for possession of less than two grams of some drugs either on bail or after pleading guilty and payment of a fine. It further recommended prisoners be allowed to make telephone calls to family members, made recommendations on the food provided to prisoners and called for an increase of the number of staff in prison. The final report is pending. They have also recommended that a police investigation is necessary to determine if prison officers performed their duties during the incident or if they had used excessive force.

A post-mortem of the bodies of the 11 individuals who died has been conducted and gunshots were identified as the cause of death in four cases. It is believed eight of those killed had COVID-19 at the time of their deaths. A court has ordered the cremation of four of the bodies. The Chairman of the Committee for Protecting the Rights of Prisoners filed a motion to ensure the bodies of the deceased are preserved rather than cremated which could destroy evidence. The Human Rights Commission of Sri Lanka has also called for the bodies to be preserved until the proceedings in relation to the deaths are concluded.

The Sri Lankan Human Rights Commission has issued a preliminary report on the incident, which recommended immediate action to reduce congestion in prisons. Other recommendations included to conduct COVID-19 screening of all new inmates, providing separate treatment facilities for prisoners who test positive to COVID-19, provide accurate information on families of prisoners who have been hospitalized, injured or died and to facilitate continuous access to food, safe drinking water and sanitation, electricity, medicine and other benefits for prisoners. The report additionally recommended taking steps to provide psychosocial support to prisoners and prison officials who may be affected by the incident in Mahara Prison.

The Sri Lankan Prison Department has announced that it will file charges against 111 prisoners who were involved in the incident indicating that the prisoners were identified by a Committee formed of two prison guards.

Suicides in prisons

Reportedly, there were at least 12 suicides in detention in 2020, which took place in at least five different prisons. The majority of individuals were detained in relation to drugs or illegal alcohol charges and all save one were awaiting trial. Reportedly, a prison official has indicated that such individuals do not have access to rehabilitation centers until they are convicted.

While we do not wish to prejudge the accuracy of these allegations, we express our most serious concern at the alleged extreme overcrowding of Sri Lankan prisons, which poses a risk to the life and health of inmates in particular in the context

of COVID-19. While we welcome the reported releases of prisoners in April and December of 2020, we are concerned that further measures are urgently needed to address the situation. We are also seriously concerned by the reported incidents in prisons including Anuradhapura, Bogambara and Mahara, including alleged excessive use of force by law enforcement officials which have led to the killings of prisoners. In relation to the Mahara prison, we welcome that investigations are being conducted, and call on the Government to promptly implement the recommendations already made by these bodies.

We would like to emphasize that when the state detains an individual it has a heightened duty of care to take any necessary measures to protect their lives. Loss of life occurring in custody in unnatural circumstances, creates a presumption of arbitrary deprivation of life by State authorities, which can only be rebutted on the basis of a proper investigation which establishes the State's compliance with its obligations in relation to the right to life. The State also has an obligation to take all necessary measures to prevent the recurrence of any violations found. The duty to protect life also requires regular monitoring of prisoner's health and preventing suicides.

We wish to also seize this opportunity to also recall that, from the very beginning of the COVID-19 pandemic, a number of United Nations individual experts, treaty bodies and United Nations agencies have warned against the disproportionate impact of COVID-19 on all persons deprived of their liberty and on the serious risks to their life. The United Nations Inter-Agency Standing Committee (WHO and OHCHR); the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the United Nations High Commissioner for Human Rights, the United Nations Special Rapporteurs on extrajudicial, summary or arbitrary executions and on the independence of the judges and lawyers as well as the Working Group on Arbitrary Detention through its Deliberation no. 11, have pointed to the specific vulnerabilities of people deprived of their liberty, including their underlying health status and the risks of mass contamination, and have called on the authorities to effectively implement their obligations to respect and protect the right to life of detainees, without discrimination. They have specifically called on States to immediately and unconditionally release all prisoners whose incarceration is illegal or arbitrary under international law, abandon or exclude detention as a sanction for persons found to be in breach of COVID-19 related measures, such as curfews; reduce the overall size of the prison population; and help tackle associated overcrowding through a review of the prison population and consideration of alternative sentencing to imprisonment for minor crimes.¹

We further highlight that pre-trial detention should be the exception rather than the norm. States should “[E]ndeavour to reduce pretrial detention and undertake comprehensive justice reforms with a view to enhance the use of alternatives to pre-trial detention and custodial sentences” (report of the Special Rapporteur on Torture, A/68/295, para.88).

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<https://interagencystandingcommittee.org/system/files/2020-03/IASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty.pdf>;
<https://undocs.org/CAT/OP/10>;
https://www.ohchr.org/Documents/Issues/Executions/HumanRightsDispatch_2_PlacesofDetention.pdf;
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E>;
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25810&LangID=E>.

In its Deliberation no. 11 on prevention of arbitrary deprivation of liberty in the context of public health emergencies, the Working Group on Arbitrary Detention recalled that the pretrial detention should only be used in exceptional cases. The current public health emergency puts an additional onus of consideration upon the authorities, as they must explain the necessity and proportionality of the measure in the circumstances of the pandemic. In particular, automatic pretrial detention of persons is incompatible with international law. The circumstances of each instance of pretrial detention should be assessed; at all stages of proceedings, non-custodial measures should be taken whenever possible, and particularly during public health emergencies. The public health emergency measures introduced to combat the pandemic may limit access to detention facilities, which in turn may effectively prevent persons held in places of deprivation of liberty from attending their court and other judicial hearings, meetings with parole boards or other entities empowered to consider their continued deprivation of liberty, or from holding meetings with their legal counsel and family. This may have an adverse effect particularly on those in pretrial detention, and on detainees seeking a review of a decision to detain them, as well as those seeking to appeal against a conviction or sentence.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide statistics on the current prison population of Sri Lanka. Please also provide information on the number of prisoners that have been released since the start of the COVID-19 pandemic, including exact numbers, dates of release and criteria upon which the releases were based.
3. Please provide information on the measures taken or planned by the Sri Lankan authorities to reduce overcrowding in prisons, including in light of the current COVID-19 pandemic, as recommended by Sri Lanka's National Human Rights Commission.
4. Please provide information on the steps taken to implement the other recommendations made in the report of the National Human Rights Commission and the five-member committee investigating the incident at Mahara Prison. Please include information on whether a police investigation has begun or is planned in relation to whether prison officers performed their duties during the incident, as recommended by the five-member committee.
5. Please provide information on the steps taken to investigate the incidents at Anuradhapura and Bogambara prisons, which led to the deaths of prisoners.

6. Please provide information on the legislation, policies and practices in place to prevent excessive use of force in prisons.
7. Please provide information on the steps taken to minimize the length of pre-trial detention, including for individuals charged under the PSA.
8. Please provide information on the measures in place to prevent suicide in prisons and to carry out independent investigations into every case that occurs.
9. Please provide information on the treatment available to individuals with substance abuse issues and their access to rehabilitation including if they are in detention pending trial.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

Elina Steinerte

Vice-Chair of the Working Group on Arbitrary Detention

Michael Fakhri

Special Rapporteur on the right to food

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Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, and without prejudice to the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards.

Pre-trial detention

Article 9 (3) of the International Covenant on Civil and Political Rights, ratified by Sri Lanka in 1997 provides that “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody”. As such, detention should not be ordered based on the potential sentence for the crime, but should be based on a determination of its necessity. Courts must examine whether alternatives to pretrial detention, such as bail, would render detention unnecessary in the particular case.²

Moreover, the Working Group on Arbitrary Detention, in the report on its visit to Sri Lanka³, noted that lengthy pretrial detention is in itself incompatible with article 9 of the International Covenant on Civil and Political Rights and may lead to arbitrary deprivation of liberty. The Government must take effective steps to reduce it by: (a) promoting the use of bail and other alternatives to detention; (b) expediting investigations; and (c) expediting court proceedings by ensuring that there are sufficient prosecutors and judges in the country. Time spent in custody during the pretrial stage must always be taken into account when the final custodial sentence is determined and those acquitted and released from pretrial detention must have an automatic right to acknowledgement of wrongful imprisonment and compensation for the years spent in custody. The Working Group also recalled that whenever possible, non-custodial measures should be used instead of pretrial detention and that those non-custodial measures must be realistic.

Every person shall be guaranteed equal and effective access to remedies for the violation of their rights, in accordance with article 26 of the Covenant.

Loss of life in custody

Article 6 of the ICCPR, , establishes the inherent right of every person to life and not to be arbitrarily deprived of life. Everyone is entitled to the protection of the right to life without distinction or discrimination of any kind.

This fundamental human right entitles “individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death,” (Human Rights Committee, General Comment 36, CCPR/C/GC/36, para. 3).

When the State detains an individual, it has a heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State, since by arresting, detaining, imprisoning or otherwise depriving individuals of their liberty, States parties assume the responsibility to care for their life and bodily integrity, and they may not rely on lack of financial resources or other logistical

² Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 38.

³ A/HRC/39/45/Add.2, paras 21-23.

problems to reduce this responsibility. The “duty to protect the life of all detained individuals includes providing them with the necessary medical care and appropriately regular monitoring of their health, shielding them from inter-prisoner violence, preventing suicides and providing reasonable accommodation for persons with disabilities,” (General Comment 36, para 25).

Loss of life occurring in custody, in unnatural circumstances, creates a presumption of arbitrary deprivation of life by State authorities, which can only be rebutted on the basis of a proper investigation that establishes the State’s compliance with its obligations under article 6 (General Comment 36, para 29). Investigations into allegations of violations of article 6 must always be independent, impartial, prompt, thorough, effective, credible and transparent. In the event that a violation is found, full reparation must be provided, including, in view of the particular circumstances of the case, adequate measures of compensation, rehabilitation and satisfaction. States parties are also under an obligation to take steps to prevent the occurrence of similar violations in the future (General Comment 26, para 28).

Use of firearms

The use of potentially lethal force for law enforcement purposes is an extreme measure that should be resorted to only when strictly necessary in order to protect life or prevent serious injury from an imminent threat. It cannot be used, for example, in order to prevent the escape from custody of a suspected criminal or a convict who does not pose a serious and imminent threat to the lives or bodily integrity of others. The intentional taking of life by any means is permissible only if it is strictly necessary in order to protect life from an imminent threat (General Comment, para 12).

States parties are expected to take all necessary measures to prevent arbitrary deprivation of life by their law enforcement officials, including soldiers charged with law enforcement missions. These measures include putting in place appropriate legislation controlling the use of lethal force by law enforcement officials, procedures designed to ensure that law enforcement actions are adequately planned in a manner consistent with the need to minimize the risk they pose to human life, mandatory reporting, review and investigation of lethal incidents and other life-threatening incidents, and supplying forces responsible for crowd control with effective, less-lethal means and adequate protective equipment in order to obviate their need to resort to lethal force. In particular, all operations of law enforcement officials should comply with relevant international standards, including the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and law enforcement officials should undergo appropriate training designed to inculcate these standards so as to ensure, in all circumstances, the fullest respect for the right to life (General Comment, para 13).

Conditions of detention:

We would like to bring to your Excellency’s attention that the right to the enjoyment of the highest attainable standard of physical and mental health is reflected, inter alia, in article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). According to Article 12, States have an obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health

services (General Comment CESCR 14, para. 34). Moreover, as outlined by the revised UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), the provision of health care is the responsibility of the state authorities and prisoners should enjoy the same standards of health care that are available in the community (Rule 24(1)). Rule 27(1) furthermore provides that all prisons shall ensure prompt access to medical attention in urgent cases. In this connection, the Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.