

**FIRST REPORT OF THE TASK FORCE ON  
JUDICIAL AND LEGAL CAUSES FOR PRISON  
OVERCROWDING AND PRISON REFORM**

*09 November 2016*

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## 1. INTRODUCTION

On 30 August 2016 the Cabinet of Ministers granted approval for the Task Force on Legal and Judicial Causes for Prisons Overcrowding and Prison Reform to evaluate the effect of relevant existing laws and make recommendations identifying avenues that would enable the efficient use of existing provisions of law to reduce overcrowding. The Task Force is also mandated to evaluate existing statistics, carry out qualitative research and studies, and propose necessary amendments to existing laws, policies and procedures to achieve the objectives of the Task Force and to provide necessary guidance to reform the prison system in Sri Lanka to adhere to international and national human rights obligations as well as to meet United Nations Minimum International Standards for Treatment of Prisoners (Mandela Rules<sup>1</sup>).

### **Stakeholder ministries and departments:**

The Secretaries to the Ministry of Justice (Co-Chair), the Ministry of Prison Reform, Rehabilitation, Resettlement and Hindu Religious Affairs (Co-Chair), the Judicial Services Commission, the Ministry of Law and Order and representatives from: the Attorney General's Department, the Department of Government Analyst, the Department of Community Based Corrections, the Department of Legal Draftsman, the Department of Police, the Prisons Department, the Judges Training Institute, the Inspector General of Police and the Legal Aid Commission.

Technical assistance is provided by the International Committee of the Red Cross.

## 2. FINDINGS AND RECOMMENDATIONS OF THE TASK FORCE

Among the key findings major contributory factors for prison overcrowding are, underutilization of existing provisions of law, misuse of existing provisions of law and socio-economic reasons. Based on data collected by the Prisons Department, remand prisoners equal the number of convicted prisoners held in custody. Based on the key findings, 3 areas of concern were identified for further action by the Task Force: prison overcrowding, prison reform, and treatment of prisoners and staff.

- i. **Overcrowding:** Judicial and Legal causes for prison overcrowding
  - a. Community Based Corrections as an alternative to imprisonment: The Community Based Corrections Act No. 46 of 1999

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<sup>1</sup>UN General Assembly Resolution A/RES/70/175 on 17 December 2015.

This legislation offers an effective alternative to incarceration which sanction Magistrates to impose community based correction orders in place of imprisonment under certain circumstances. The offenders are engaged in effective projects which provide the persons with vocational training and an opportunity to re-integrate into society, which results in reducing recidivism.

*Recommended Action:* To establish a dialogue between the Department of Community Based Corrections and Magistrates with the assistance of the Sri Lanka Judges Training Institute (JTI) for and the Judicial Service Commission (JSC) the effective enforcement of Act No.46 of 1999 to ensure community sanctions as alternatives to imprisonment are in place.

b. Persons Unable to Pay fines

Currently there are a significant number of persons within the prison system who are imprisoned due to their inability to pay court imposed fines under section 15(3) of the Code of Criminal Procedure Act. The Code of Criminal Procedure (Amendment) Act No.4 of 1995 was introduced as an alternative to imprisonment when in default of a fine. It provides for the staggered payment of fines as an alternative to imprisonment. If utilized to its full potential, this law may provide a basis for release from custody of a large number of persons who are unable to pay fines due to poverty.

*Recommended Action:* Review of cases and effective enforcement of the Act by Magistrates will enable reduction of prison overcrowding. Dialogue between Magistrates with the Department of Prisons, JTI and JSC on the subject is required for effective enforcement of this staggered payment of fines.

c. No Date Cases<sup>2</sup>:

No Date cases are cases where Magistrate has no jurisdiction to try a particular cases and the case is referred to the Attorney General for indictment in the High Court or release of a remandee. The files are sometimes misplaced within the system resulting in long term detention of a remandee. 126 cases of this nature were reported to the Task Force. The Legal Aid Commission together with Attorney Generals' Department and the Prison Department are working towards resolving the reported cases.

*Recommended Action:* In order to prevent further "no date" cases, to take appropriate measures to call all cases before the Magistrate until the person is indicted by the High Court. It is further recommended for the Prisons Department to implement a Management Information System (MIS) to be able to provide information and report to the Attorney General's Department, Magistrates and Police if and when not-date cases arise.

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<sup>2</sup>No Date cases: cases where Magistrate has no jurisdiction to try a particular cases and the case is referred to the Attorney General for indictment in the High Court or release of a remandee.

d. Release of Remand Prisoners Act No.8 of 1991.

Prison data reveals that there are currently 9552 unconvicted prisoners held in custody. This constitutes 52% of the total prison population, an unnecessary contributor to overcrowding. Act.No.8 of 1991 endeavours to ensure that persons are not remanded for undue lengths of time unreasonably leading to congestion in places of detention and violation of fundamental rights of remandees. Consequent to discussion at the Task Force, the Commissioner General of Prisons sent out a circular to all Superintendents of Prisons emphasising the need to comply with the Act. The Act provides for significant reduction in remand prison overcrowding.

*Recommended Actions:*

Ensuring Magistrates visit prisons once a month as specified in the Act- This requires monitoring by the Judicial Services Commission (JSC).

Prison Department to produce remandees falling within the eligibility criteria, for bail and or bond as outlined in the Act, before the Magistrate. -Enforcement of the Act will be continuously monitored and supported with the assistance of the JSC, the Attorney General's Department and the Prisons Department.

e. Police Bail.

Section 6 of the Bail Act No.30 of 1996 provides that, in cases of bailable offences, the officer in-charge of the Police station may release a person on a written undertaking to appear before a Magistrate on a given date, provided such release is made prior to the expiration of twenty four hours of such person's arrest.

Usage of Police bail can considerably reduce number of remand prisoners. However there seems to be hesitation on the part of the Police to use this provision as there is a negative assumption by the general public that when Police bail is granted it is due to corruption or malpractice by the Police.

*Recommended Actions:*

Ensure the Bail Provisions Act is implemented by police through refresher training, sensitization, advocacy and awareness within the Police Department.

A communication strategy should be adopted by the Police Department and relevant stakeholders to make police and communities more aware of the provisions of the Bail Act.

f. Death and Life Sentenced Prisoners

As capital punishment has not been carried out since 1976 and due to the moratorium on the death penalty, the government has to consider alternative action to manage overcrowding of prisons as life sentenced and death penalty prisoners contribute greatly

to overcrowding. To date there are a total of 1082 persons under sentence of death, 726 cases remain under appeal. Life sentence prisoners total 555 with 463 cases under appeal.

*Recommended Actions:*

Consider commutation of death penalty prisoners' sentences to life sentences. Life sentenced prisoners' sentences can be commuted according to existing provisions of law. Making Presidential pardons available to long term prisoners who are rehabilitated and are able to re-integrate with society and to consider a system of parole for detainees who are identified as eligible by a Parole Board.

## II. **Prison Reform**

### a. Review of Prison Act and Prison Rules:

Prison Act and Prison Rules are currently being reviewed. A new draft Act and Prisons Rules are being discussed. A sub-committee of the Task Force has been appointed to review the draft Prison Act and Rules to ensure compliance with the Mandela Rules and national and international human rights obligations of the Government of Sri Lanka.

*Recommended Action:* Sub-Committee to complete any necessary amendments to the Prison Act and review the Prison Rules in the first quarter of 2017.

### b. Prison Design, Construction and Re-Location.

Sub-Committee to be appointed by the Task Force: the sub-committee will, based on available data, statistics, and needs assessments, identify needs of the prison system in Sri Lanka in order to meet international minimum standards pertaining to construction and management of prisons.

This committee will take into consideration classification, risk needs-assessment-in order to provide for appropriate housing and treatment based on risk and needs and categories of prisoners such as drug users and traffickers, violent offenders, youthful offenders, women and persons with specific medical and/or mental health needs to name a few.

The Committee will also consider facilities for women and children, and gender equality in providing facilities based on identified needs. It will include re-location and upgrading of existing prisons.

## III. **Treatment of Prisoners and Staff**

To create a safe and secure environment for staff and inmates in order to ensure interventions and interactions between staff and inmates are positive and corrective. Task Force will work towards ensuring that Mandela rules are met in treatment of inmates within the Sri Lankan Prison System.

It will also take into consideration the needs of the staff within the prison system and ensure correctional rehabilitation as opposed to punitive incarceration as a priority.

*Recommended Actions:*

Prisoners

Ensure the relevant corrective measures are made available to prisoners through assessment, placement, treatment, and appropriate conditions of incarceration in order to assist prisoners in: 1.Reducing their risk to reoffend and 2. Become law abiding and successfully socially integrated members of society. Special emphasis will be placed on vocational training and skills development.

Staff

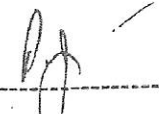
Acknowledge the field of corrections as a professional specialty and recognize the challenges faced by staff in fulfilling their duties. In so doing:

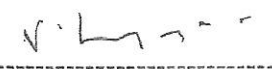
- a) Streamline the recruitment process to ensure the hiring of qualified candidates.
- b) Ensure a merit based process for retention and promotion.
- c) Provide the tools and learning opportunities to staff to work as correctional professionals in an ever changing organization empowering them to contribute to the safety and security of institutions and the community.

**CONCLUSION**

The Task Force recommends these initiatives be expeditiously implemented to improve the prison system of the Country. The Task Force will continue to work in these and other relevant areas.

*Date: 09 November 2016*

  
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Padmasiri Jayamanna  
*Secretary*  
*Ministry of Justice*

  
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V. Sivagnanasothy  
*Secretary*  
*Ministry of Prison reforms, rehabilitation,*  
*resettlement, and Hindu religious affairs*