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HUMAN RIGHTS ...

**... and the
Unconvicted
Prisoner**

**A Study on Welikada
Remand Prison**

**Centre for the Study of Human Rights
University of Colombo**



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Sri Lanka
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PREFACE

Throughout the world, prisons face innumerable challenges regarding the conditions, treatment, rehabilitation and rights accorded to those incarcerated. Issues of overcrowding, poor health and sanitation and violations with regard to the rights of women, juveniles and minorities are not found in Sri Lanka alone. Due to their diverse circumstances – and the range of constraints they face – each prison seeks ways of overcoming these issues. However, a key difference can be identified in the way each of these issues are dealt with.

The condition of Sri Lanka's prisons has led the former Commissioner General of Prisons, Mr H.G. Dharmadasa, to state that prisons are the most neglected area of Sri Lanka's criminal justice system. That Sri Lanka falls far short of internationally accepted standards as laid down in the **Standard Minimum Rules for the Treatment of Prisoners**, coupled with the commonly held belief that Sri Lanka's prisons are not equipped to meet the current challenges facing them, underscore the importance of reports such as this.

The first hand research that is the basis of this report aims to openly address the shortcomings in Sri Lanka's treatment of its prisoners. By highlighting these issues, the authors aim to create space for discussion, dialogue and to provide information through which these abuses can be remedied; benefitting the prisoners and the society to which they return.

This open approach is supported by Andrew Coyle, Director of the UK-based International Centre for Prison Studies. He sees initiatives that highlight weaknesses in prison systems as crucial in attempts to improve the treatment of prisoners. This involves penetrating the veil of secrecy that hinders attempts to make improvements. This report does just that.

Using the framework of Human Rights, the authors of these two papers focus on the situation faced by unconvicted, or remand prisoners – an area rarely highlighted in the public domain. Through the course of their interviewing and data collection it is revealed that numerous injustices are perpetrated within Sri Lanka's Welikada Prison. This research is in two sections. The first, by Mr. Nishara Fernando, deals with the socio-economic aspects of the target group, while the second, by Ms. Menaka Dahanayake, assesses the human rights situation of the remand prisoners.

Although the research was conducted some years ago, CSHR hopes that the information will stimulate thought, discussion and agitation for change amongst Sri Lanka's civil society, while its recommendations may be useful to relevant policy makers.

I congratulate the authors on their efforts.

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PART 1

SOCIO-ECONOMIC PROFILE OF THE SAMPLE POPULATION

NISHARA FERNANDO

1. INTRODUCTION

The purpose of this study was to examine the observance of human rights by the prison authorities with regard to unconvicted (or remand) prisoners in Welikada Prison in Sri Lanka. The study was conducted over a period of approximately three months, during which period 150 remandees were interviewed by 20 well trained final year law undergraduate enumerators using structured interview schedules. It is important to mention here that, in addition to this method, the simple observation method was employed as a data-collecting tool to observe the conditions under which male and female remandees were detained in their separate sections of the prison.

The team's aim was to maximize the advantages of each data collecting tool, minimize its disadvantages and to maintain the validity and reliability of the research. Prior to commencing the survey, the data collection tools as well as the sampling method were tested in a pilot survey, after which the interview schedules were revised.

Regarding the limitations of the study, it should be noted that the enumerators had only a few hours per week to interview the remandees with the permission of the Prison Department. These interviewers did their best to build up *rapport* with the interviewees in order to conduct quality interviews. Though there were some slight disturbances from both remandees and prison officers, we feel that these were successfully controlled throughout the research. It is important to mention here, that even though there were more than six hundred remandees in the remand section at the time of the fieldwork, the team was able to select 150 remandees without any interference from prison officers. This was quite creditable for several reasons; in the past, remandees had been selected by prison officers. Such a situation is unsatisfactory as remandees cannot refuse to participate in the interview since they have been nominated on the authority of the prison guards. By following the above ethical principle, several remandees whom we selected opted not to participate in our research. Owing to the continually changing study population, the random sampling method could not be utilized to select the respondents, and no generalization of the findings was possible. Nevertheless, the main findings of this research will help in carrying out a more in-depth study in the future.

1.1. SOCIO-ECONOMIC PROFILE OF THE SAMPLE POPULATION

1.1.1. AGE STRUCTURE

Table 1 - 1 - Age

	Frequency	Percent	Valid Percent	Cumulative Percent
15-29	67	44.7	46.2	46.2
30-40	47	31.3	32.4	78.6
41-50	22	14.7	15.2	93.8
51-60	8	5.3	5.5	99.3
61>	1	.7	.7	100.0
Total	145	96.7	100.0	
No response	5	3.3		
Total	150	100.0		

Table 1-1 gives the age structure of the sample remandees from which it is evident that over 90% of the remandees belong to the economically active population. On the other hand, 46% of the remandees fit into the youth category (15-29 age cohort). The number of remandees decreases with increasing age.

1.1.2. GENDER

Table 1 - 2 - Gender

	Frequency	Percent	Valid Percent	Cumulative Percent
Female	32	21.3	21.3	21.3
Male	118	78.7	78.7	100.0
Total	150	100.0	100.0	

Even though the national distribution is slightly higher for females, Table 1-2 gives a very different picture. Nearly 79% of the respondents are male, while female remandees make up 21%. This could be partially due to the following reason. At the time of the study, convicted prisoners as well as unconvicted prisoners shared the female section of the prison, which did not have adequate space for a large number of remandees. Due to lack of space, a large number of female remandees had been transferred to other prisons.

1.1.3. MARITAL STATUS

Table 1 - 3 - Marital Status

	Frequency	Percent	Valid Percent	Cumulative Percent
Unmarried	66	44.0	44.0	44.0
Married	83	55.3	55.3	99.3
Divorced	1	.7	.7	100.0
Total	150	100.0	100.0	

Table 1-3 gives the marital status of remandees. Clearly, over half of the population (55.3%) is married and 44% of the respondents are unmarried. The reason for this pattern could be that there are more youth respondents in the age group of 15-29.

1.1.4. RELIGION

Table 1 - 4 - Religion

	Frequency	Percent	Valid Percent	Cumulative Percent
Buddhist	122	81.3	81.3	81.3
Hindu	13	8.7	8.7	90.0
Christian	10	6.7	6.7	100.0
Islamic	5	3.3	3.3	93.3
Total	150	100.0	100.0	

Table 1- 4 gives the distribution of the sample of youth by religion and it is evident that the majority (81.3%) of the remandees is Buddhist, followed by Hindu (8.7%), Christian and (6.7%) Islamic (3.3%).

1.1.5. EDUCATION

Table 1 - 5 - Education

	Frequency	Percent	Valid Percent	Cumulative Percent
No education	25	16.7	16.7	16.7
Grade 1-5	40	26.7	26.7	43.3
6-10	57	38.0	38.0	81.3
O/L	20	13.3	13.3	94.7
A/L	8	5.3	5.3	100.0
Total	150	100.0	100.0	

As regards educational levels of the sampled remandees, 38% of the respondents had an education level of grade 6-10, while nearly 27% of them have an education level of grade 1-5. Only a few (5.3%) of the respondents have an education of upto GCE Advanced Level. What is alarming from the above data is that nearly 17% of the remandees have no formal education even though some of them can write and read in their mother language. With regard to the above data, one can say that the number of remandees increases with decreasing education.

1.1.6. OCCUPATIONAL STATUS

Table 1 - 6 - Occupational Status

	Frequency	Percent	Valid Percent	Cumulative Percent
Unemployed	7	4.7	4.7	4.7
Technical	3	2.0	2.0	6.7
Clerical	5	3.3	3.3	10.0
Agricultural & Fisheries	16	10.7	10.7	20.7
Production & Related workers	8	5.3	5.3	26.0
Transport equipment operators	2	1.3	1.3	27.3
Labourer	38	25.3	25.3	52.7
Services	40	26.7	26.7	79.3
Self employment	6	4.0	4.0	83.3
Business	21	14.0	14.0	97.3
Domestic duties	4	2.7	2.7	100.0
Total	150	100.0	100.0	

The above table shows that nearly 27% of the respondents worked in the service sector, while 25% of the respondents worked as daily paid labourers. 18% of the respondents earn an income either by running their own business or through self-employment. However, it is important to mention here that a number of their businesses were related to small or large illicit liquor trade and selling of heroin and other kinds of drugs. Nearly 11% of the population work in the agriculture and fisheries sector, while 5% of remandees are unemployed.

1.1.7. INCOME

Table 1 - 7 - Monthly Income

	Frequency	Percent	Valid Percent	Cumulative Percent
No income	11	7.3	7.3	7.3
1-3000	56	37.3	37.3	44.7
3001-6000	44	29.3	29.3	74.0
6001-10,000	24	16.0	16.0	90.0
10,001-20,000	12	8.0	8.0	98.0
20,001>	3	2.0	2.0	100.0
Total	150	100.0	100.0	

As the data in Table 1-7 shows, 90% of the respondents earn a monthly income of only Rs 10,000 or below. While only 10% of the respondents earn a monthly income of Rs 10,000 or more, although this bracket could include those remandees who earn an income through illegal means. On the other hand, it is noteworthy that 7% of the remandees do not have a monthly income. The mean income was Rs 5492.3.

1.2. CONCLUSION

As mentioned earlier, the main purpose of this study was to explore the conditions of the remand prisoners from a human rights perspective in a well-known remand prison in Sri Lanka. As a part of the above study, the socio-economic profile of the remandees was addressed.

In relation to age, it is evident that over 90% of the remandees belong to the economically active population (15-49 age cohort), and 46% of them fit into the youth category (15-29 age cohort). It is noteworthy that over three-fourths of the remand population consists of males, which is not a common characteristic with respect to all island gender distribution. Over 55% of the remandees were married. The religious background of remandees is another important area. It is clear from the data that over 81% of the remandees are Buddhist.

As regards educational levels of the sampled remandees, it is clear that nearly 17% of the remandees had no formal education, while another 27% have had a primary education. What is important to mention here, is that only 5% of the remandees had passed their GCE Advanced Level. It can be concluded here that the majority of remandees tend to have a lower level of education, while a minority of remandees have a higher level of education.

Relating to their low levels of education, 25% of the remandees worked as daily paid labourers, while 18% earned an income by running their own business or through self-employment, and only 5% of the remandees were unemployed in the period of the survey. However, the mean monthly income was Rs 5492.3.

PART 2

HUMAN RIGHTS OF UNCONVICTED PRISONERS

MENAKA DAHANAYAKE

2. INTRODUCTION

The basis for justice is respect for the rights of every individual. As the **Universal Declaration of Human Rights (UDHR)** states, the "recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." The way a person accused of a crime is treated by the State, provides a concrete demonstration of how far that State respects the rights of its citizens.

Every government has a duty to bring to justice those responsible for crimes. However, in certain circumstances in Sri Lanka, the justice system lacks credibility. This includes cases where persons are tortured or ill treated by law enforcement officials or unjustly convicted; as well as when trials are unjust and inordinately delayed. Unless human rights are upheld in the Police Station, the Interrogation Room, the Detention Centre, the Court and in Prison, the government fails in its duties and betrays its responsibilities.

This report examines how human rights standards are maintained within Sri Lanka's justice system and how far the justice system is able to protect the rights of remandees, and meet international standards of fairness. This study is based on a survey conducted by the CSHR in 1998 in Welikada Remand Prison. Covering many of the rights which apply to all persons deprived of liberty while being held in pre-trial detention, this research focuses on the rights of persons charged with, but not yet convicted, of either criminal or civil offences.

A look at any prison will show that many basic needs of the prisoners remain neglected. A prison is a place where persons who have either been accused of committing or been implicated in committing a criminal offence are confined, or the place where such persons are deprived of their liberty. Yet it should not be a place where a person is subjected to any cruel, inhuman, or degrading treatment or deprived of human dignity. Prisons should be places of correction, reformation and rehabilitation. Contrary to this concept, prisons in Sri Lanka today are veritable nurseries of vice, where the inmates are treated in an undignified and inhumane manner.

The research team focused its attention on the rights of remand prisoners, i.e. persons who are awaiting trial, having not been convicted of any offence. Despite their right under the law to be presumed innocent until convicted, unconvicted prisoners are still referred to as "suspects."

Respect for human rights serves the purpose of preserving human dignity and freedom. Everyone has the right to personal liberty; this is enshrined as a fundamental human right in Sri Lanka. These standards seek to ensure that a government may deprive persons of their liberty only in certain prescribed circumstances.

International human rights standards, to which Sri Lanka is party, provide a series of protective measures, both to ensure that individuals are not deprived of their liberty unlawfully or arbitrarily, and to establish safeguards against other forms of abuse. All prisoners should enjoy the right to freedom from torture and inhuman treatment, and to be presumed innocent until proven guilty beyond reasonable doubt, or on the balance of probability in the course of a fair trial.

Article 9 of the **UDHR** declares that “no one shall be subjected to arbitrary arrest, detention or exile.” This basic guarantee applies to everyone held in confinement, whether held in connection with criminal charges or for any other offences.

An individual may only be deprived of his or her liberty on such grounds, and according to procedures established by national law, as well as complying with international standards. Prisoners’ rights can be restricted according to procedures established by law, while the rights of those as yet unconvicted (i.e. remandees), can be limited to a lesser extent of being confined. Unconvicted persons held in confinement and awaiting trial should be entitled to the same treatment as other citizens.

2.1. PURPOSE AND METHODOLOGY

Welikada Prison, the largest prison in Sri Lanka was selected to conduct this Study on remand prisoners. This research focused on civil, political, economic, cultural, and social rights of remand prisoners. The main objectives of the study are as follows:

- ♦ To analyse the cause and the nature of the offences committed by remandees
- ♦ To examine how remandees are penalised for their crimes
- ♦ To identify the facilities required by remandees and the extent to which they are utilised
- ♦ To gauge the level of awareness of human rights among remandees and prison officials
- ♦ To gauge the level of awareness of related laws among prison officials

- ♦ To identify methods of promoting awareness of human rights and related laws among prison officials

The research team interviewed and collected information from 150 male and female detainees. Attempts were made to obtain information on the difficulties faced by prisoners, the facilities they are entitled to, but do not receive from administration.

This report used international standards in comparison with Sri Lanka's domestic law. The right of persons deprived of their liberty to be treated humanely is enshrined in many international standards. The research team tried to assess the level and status of prisoners through discussions of violations within the prison. Individual Articles of the **Standard Minimum Rules for the Treatment of Prisoners (SMR)** were assessed in the Welikada Prison. Several areas were found where the Sri Lankan prison fell below accepted standards. This study encountered many incidents and complaints made by detainees of human rights violations.

2.2. UNCONVICTED OR REMAND PRISONERS

The conditions of detention of remand prisoners are regulated by Section 94 of the **Prison Ordinance**. Briefly, a remand prisoner is one who has not yet been found guilty and is therefore, treated as an innocent person who is entitled to a number of privileges denied to convicted offenders. For example, a remand prisoner is entitled to wear his/her own clothing, receive meals from home, bring his/her own bedding, carry on his/her normal business and even receive treatment from his/her own Medical Officer. At the end of the period of detention specified in the warrant of remand, he/she must be produced before the Magistrate who may extend his/her period of remand if the investigations are not completed, or order his or her release on bail.

In Sri Lanka, the number of persons remanded to prison custody annually is estimated at 65,000. These numbers have resulted in excessive overcrowding in remand sections of Sri Lanka's prisons, creating a host of new problems.

Table 2 - 1 Comparison of Number of Prisoners in 1995 and 1997

Year	Less than 1 month Number	1 - 6 months Number	6 months - 1 year Number	Over 1 year Number
1995	2,702	1,841	89	661
1997	2,920	1,613	85	826

Many prisoners are remanded in prison for less than 1 month. In 1995, 2,702 remand prisoners were kept for one day, a week or less than a month. The number of prisoners held increased in 1997 up to 2,920. However, there are more than 500 prisoners annually, who are incarcerated for over a year. In 1995, 661 prisoners had been kept for over one year, increasing to 826 in 1997.

Internationally, the rule is the same: imprisonment means detention. However, the actual treatment of prisoners and conditions of prisons can be very different. In Welikada Remand Prison for example, over 2,000 remandees are held, which is more than twice its maximum capacity.

The presumption of innocence is meant to ensure the freedom of the individual and to give the individual maximum protection. In most legal systems the standards of proof required by law to convict an individual of a criminal offence, is proof of guilt beyond reasonable doubt. Article 13 (5) of the present Constitution of Sri Lanka gives special recognition to this.

International standards explicitly recognize that there are, however, circumstances in which authorities may impose conditions on a person's liberty or detain an individual pending trial. Pre-trial detention, however, should be an exception and should be as short as possible. Detention on suspicion must not only be lawful, but must be necessary and reasonable under the circumstances.

In accordance with these standards, there is a presumption that persons charged with criminal or other offences will not be held in custody before their trials. As this is not the case, being kept in a secure place and having their freedom of movement restricted should be the only difference between remandees and people not incarcerated.

International covenants as well as domestic laws permit authorities to hold persons in custody as an exceptional measure if it is necessary to ensure that the person appears for the trial. Within Sri Lanka, the 'necessity' requirement has been interpreted broadly. The mere suspicion that a person has committed a crime is not sufficient to

justify detention pending investigation and indictment. A person should only be detained when they pose a clear and serious threat to society. If a person is held in detention pending trial, the authorities must keep in mind the necessity of keeping such detention under regular review.

Every society uses its criminal law to maintain law and order and to protect the rights of the people. In achieving this, however, criminal law infringes on the freedom of the individual who is suspected of any illegal activity. Such limitations on freedom are justified, as they are necessary to protect society as a whole.

Sri Lanka, which recognizes the sanctity of life and liberty, follows the concept of 'due process of law' as a safeguard against the powers of the State. Protection against arbitrary arrest and detention is an important part of the 'due process' and forms the central feature of Article 9 of the **International Covenant on Civil and Political Rights (ICCPR)**. It is intended to prevent unlawful detention, but its protection also applies to persons whose detention is lawful.

Persons should not be stripped of their dignity merely because they are within a prison. Article 14 (2) of the **ICCPR** is an expression of the well-known principle in criminal law, of the presumption of innocence; this is a vital principle in safeguarding the liberty of the individual. It is applicable both at the pre-trial stage and during the trial.

2.3. BASIC STANDARDS FOR PROTECTION OF PRISONERS' RIGHTS

This section explains the various types of international human rights standards relevant to prisoners and some of the bodies that give guidance on how to interpret these standards. If these instruments are not incorporated into domestic law, injustice is done to prisoners.

Specific rights of prisoners are found in non-treaty standards, including:

- ♦ **Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment**
- ♦ **Standard Minimum Rules for the Treatment of Prisoners**
- ♦ **Principle of Medical Ethics**
- ♦ **European Prison Rules**

These international standards for detention and imprisonment aim to protect every detainee's rights, while he or she is deprived of liberty. The duty to treat detainees with respect for their inherent dignity is a basic standard of universal application.

Being a member of the United Nations, and a signatory to many Conventions pertaining to the rights of prisoners, Sri Lanka has a moral obligation to incorporate these standards into domestic law to protect remandees' rights. This has proved to be a slow process.

While not being legally binding the treaties or standards whether universal or regional, bring pressure on States to take responsibility for observing and applying these standards.

Respect for the dignity of detainees, protection from torture, guarantees against arbitrary treatment, the right to a fair trial and impartial justice are the main pillars of the international system for protecting prisoners. Such mechanisms maintain that there is a need to afford to prisoners, rights that exist for all human beings whether free or in custody. The domestic laws of States customarily restrict the exercise of arbitrary State or individual power over people in prison.

The International Committee on Crime Prevention and Control recently recommended the implementation of a number of provisions to the SMR. These provisions should be extended to protect a person during arrest or when imprisoned without charges.

Article 36 (1) of the **Body of Principles for the Protection of All Persons under Any form of Detention or Imprisonment** states that: *"anyone suspected of, charged with, arrested or detained in connection with a criminal offence who has not yet been tried is to be treated in accordance with the presumption of innocence."*

International standards require that the treatment of remand prisoners should be different from that of people who have been convicted. Remandees are not to be subjected to any hardship or constraint other than that resulting from the deprivation of liberty. Among the conditions applicable to detainees held before trial, are:

- ♦ *The right to be segregated from people who have been convicted and sentenced*
- ♦ *The right to be assisted by an interpreter for the purpose of their defence*
- ♦ *A limited right to be visited by their own doctor and dentist at their own expense*
- ♦ *The right to wear their own clothing if it is clean and suitable, or prison clothing which is different from that of a convicted prisoner's*
- ♦ *The right to wear civilian clothing in good condition for court appearances*
- ♦ *The right to buy books, writing material and newspapers so as long as they are compatible with security, order and justice*

2.4. RULES APPLICABLE TO PRISONERS UNDER ARREST OR WHEN AWAITING TRIAL

According to the SMR, there are special provisions to protect the rights of detainees. Sri Lanka, as a signatory to this, is obliged to observe these standard minimum rules:

- Article 84 (1) - Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as 'untried prisoners' hereinafter in these rules.
- Article 84 (2) - Unconvicted prisoners are presumed to be innocent and shall be treated as such.
- Article 84 (3) - Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit by a special regime which is described in the following rules in its essential requirements only.
- Article 85 (1) - Untried prisoners shall be kept separate from convicted prisoners.
- Article 85 (2) - Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.
- Article 86 - Untried prisoners shall sleep singly in separate rooms, with the reservation of different local customs in respect to the climate.
- Article 87 - Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from the outside, either through the administration, or through their family or friends, otherwise the administration shall provide their food.
- Article 88 (1) - An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable.
- Article 88 (2) - If he wears prison dress, it shall be different from that supplied to convicted prisoners.
- Article 89 - An untried prisoner shall always be offered the opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.

- Article 90 - An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party books, newspapers, writing materials and other means of occupation as are compatible with the interest of the administration of justice and the security and good order of the institution.
- Article 91 - An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred.
- Article 92 - An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.
- Article 93 - For the purpose of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing materials. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.

While the rules above are applicable to prisoners under arrest or awaiting trial, the survey conducted showed that, Welikada prison officials did not follow the majority of these rules.

2.5. STATUS OF REMANDEES AT WELIKADA PRISON

Judging by the **SMR**, conditions in Sri Lankan prisons are below acceptable standards. Although the State has an absolute duty to uphold these standards through domestic law for the benefit of prisoners, this is not done, as the following comments show.

Article 8 of the **SMR** states that different categories of prisoners shall be kept in separate institutions, or parts of institutions, taking into account their gender, age, criminal record, the legal reason for their detention and the necessities of their treatment. Men and women shall as far as possible be detained in separate institutions. In an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate.

- ♦ *In Welikada Prison, both remand and convicted prisoners were confined within the same premises, except during the time they spent in their cells. Welikada does not have separate cells for different types of offences nor do the officials differentiate between them.*
- ♦ *The cells located inside the prison are far below acceptable living standards. At the time of the study, detainees in this prison were confined to spaces that had no access to sunlight and had water seeping from the floor. During the greater part of the day these detainees preferred to be outside their cells, which was reported to be also unsatisfactory, due to harassment by convicted prisoners.*
- ♦ *The physical condition of the Remand Prison is below all accepted standards. There is inadequate bedding and other essentials for human well being, and detainees are forced to stay in covered cells. These blocks consist of several small rooms and a big hall. Rooms were originally intended to accommodate 2 people, but are used by a statistical average of 7.8 prisoners. This building was originally designed to accommodate a maximum of 150, but now holds over 400 persons.*
- ♦ *The inadequacy of these cells has been critically commented upon on many occasions. These cells are very cramped and have no windows, lighting, ventilation and space to move about. The Prison authorities and the relevant Ministry are known to be aware of the problem but do not appear to be seeking a solution.*
- ♦ *Lavatories are located inside the cells. The number of toilets is extremely inadequate: in one area, 400 remandees were allocated only 3 toilets. Overcrowding and unsuitable facilities make hygiene extremely primitive. In addition, inadequate ventilation leads to conditions of unbearable heat.*
- ♦ *Half of the remandees who were interviewed during the study said that they do not have any facilities, including adequate provision of basic necessities such as food and water.*
- ♦ *According to both remandees and the authorities, a huge backlog of unresolved court cases had greatly prolonged pre-trial custody. This delay is partly responsible for the excessive numbers in the prison.*
- ♦ *According to Article 15 of the SMR, 'prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet facilities as are necessary for health and cleanliness.' These standards have not been implemented in Welikada Remand Prison.*
- ♦ *It was found that unconvicted prisoners, who suffer from infectious diseases, were kept along with other remandees. Those who had been kept in prison for long periods of time were found to be suffering from disease, resulting from inadequate facilities. The inability to wash or obtain adequate clothes compound incidences of diseases among remandees.*
- ♦ *There have been many allegations of violations of prisoners' rights such as ill treatment and discrimination.*

- ♦ *Inadequacy of buildings and space are matters of concern. Nearly 1,000 remandees are kept in small cells, which are intended for 400 persons. In Welikada Prison, 3 blocks are allocated for unconvicted prisoners, adjoining those of convicted prisoners.*
- ♦ *All accommodation provided for the use of prisoners, and in particular all sleeping accommodation is required to meet required standards of health. This includes due regard to climatic conditions, particularly the cubic content of air per head, minimum floor space, lighting, heating and ventilation. Statistics disclose that facilities in the Welikada Prison in this regard are below minimum standards. The data obtained on the facilities available for prisoners have been classified in the order of their importance to the prisoners. Table 2-2, below, shows that a majority of the remandees complained about the lack of facilities in the prisons, which was corroborated by our observations.*

Article 9 of the SMR, states that where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. Unless for special reasons such as temporary overcrowding, when it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in one cell, as in a room.

Table 2 - 2 - Problems faced in the Remand Prison

Problem	Frequency	Percentage
Adequate facilities	23	10.7
Lack of water	47	21.9
Lack of food	30	14.0
Insufficient space	33	15.3
No facilities at all	75	34.9
Lack of toilet facilities	7	3.2
Total	215	100

* Multiple Response Question

- ♦ *The Government provides food for all prisoners, including remand prisoners. According to the prisoners, the quantity of food (even though it is of reasonable quality) is insufficient.*
- ♦ *The meals are prepared by convicted prisoners and distributed to all inmates. Remand prisoners, however, can have food from outside which may be brought in by their families. This survey found that 21.9% of the prisoners complained of the lack of water, while 14% stressed the lack of food, and 3.2% the lack of toilet facilities. The State is also obliged to provide for recreational facilities, freedom to practice religion, and communication with others; this was found to not be the case.*

- ♦ *In the course of the interviews, it was noted that it was remandees who have been detained for several years (2 or 3 years) who stressed the above inadequacies. Some prisoners have adapted to the system and they do not want to make any allegations against the authorities. 10.7% said that they were satisfied with the facilities that they have, and they did not complain about the system. Several reasons were noted for their attitudes during the research. Most persons in this group do not have a permanent residence, family or job and are uncertain of their future. As a result, they stated their preference to live in prison for as long as possible.*
- ♦ *Remand prisoners are entitled to wear their own clothes and have daily visits from members of their family and their friends. They are allowed to receive parcels and food. Prison authorities do not raise any objections to remand prisoners receiving food and parcels, which they do regularly. The State has a duty to fulfil the essential needs of remandees, and those who are poor and whose homes are outside Colombo usually get their food from prison. According to some remandees, they can have whatever they want from outside by bribing officials.*

2.6. ACCESS TO LAWYERS

There are many reasons why remandees are detained for long periods of time, one of which is the financial condition of the detainee. According to the **Body of Principles for the Protection of All Persons under Any form of Detention or Imprisonment**, everyone in detention or facing a possible criminal charge has the right to the assistance of a lawyer of their choice to protect their rights and assist in their defence. If the person cannot afford to hire a good lawyer, a qualified counsel should be assigned immediately. A person must also be given adequate time to communicate with their lawyers.

Principle 17 onwards of the **Body of Principles for the Protection of All Persons under Any form of Detention or Imprisonment**, states that governments should provide legal counsel for the poor and disadvantaged people. Prisoners from low-income families, however, do not have enough money to consult lawyers nor sufficient knowledge of legal aid to know their entitlements. Where an offence is bailable, most remand prisoners fail to provide surety due to poverty. As a result, there are many persons who have been held without a trial in remand for up to 14 years. Table 2-3 gives a profile of the average income of a prisoner.

Table 2 - 3 - Respondents' Income

Income per Month- Rs	Frequency	Percentage
No income	11	7.3
Uncertain	6	4.0
< 1-1000	5	3.3
1001-2000	19	12.8
2001-5000	59	39.3
5001-10,000	35	23.3
10,001-20,000	12	8.0
20,000 >	3	2.0
Total	150	100

It was sought to establish the reasons why many remandees have been kept for lengthy periods in prison. Those who are suspected of a minor offence may have the chance to avoid imprisonment by providing surety, but they may not be in a position to do so. 7.3% of respondents with no income had no way of avoiding imprisonment due to their financial problems, and their only option was to remain in prison. It was observed that those who receive low incomes appeared depressed, with little hope for the future.

The above facts indicate the existence of a significant class differentiation among remandees. Those who are at an economic advantage, have the chance of obtaining bail, as well as the assistance of well-known or prominent lawyers, while those who are not economically well off, have access to neither.

Tables 2-4, 2-5 and 2-6 indicate the position with relation to the availability of legal aid to remandees.

Table 2 - 4 - Assistance from Lawyers

Response	Frequency	Percentage
No	64	42.7
Yes	85	56.7
No response	1	0.6
Total	150	100

According to Table 2-4, 43% of remand prisoners do not have legal assistance and have therefore, been kept for uncertain periods, ranging from a month to several years. 57% of remand prisoners, however, have obtained assistance.

Table 2 - 5 - Facilities for Meeting with Lawyers

Facilities	Frequency	Percentage
No	92	61.3
Yes	42	28
Do not know	14	9.4
No Response	2	1.3
Total	150	100

Of the 150 remandees, 62.2% were not satisfied with the facilities that they had been provided with, to meet their lawyers. Persons with a background of poverty, who were not aware of their rights and the law, were found to rarely receive adequate assistance to their problems. This latter group did not even know that they have the right to legal assistance.

Table 2 - 6 - Lawyers' Fees

Fees - Rs	Frequency	Percentage
Do not know	29	19.3
No Response	63	42
Free	3	2
50	1	0.7
100	1	0.7
150	1	0.7
200	13	8.6
250	6	4
300	8	5.3
400	1	0.7
500	14	9.3
1000	4	2.6
1500	2	1.3
2000	1	0.7
4000	1	0.7
5000	1	0.7
20,000	1	0.7
Total	150	100

Upon speaking to these prisoners, however, it appeared that many of the remandees who receive assistance rarely consult the lawyers, while others have spent the bulk of their money on these lawyers. Some remandees had been obliged to mortgage or sell their properties to obtain necessary finances. The survey also revealed that those who are from lower middle and middle class families were more likely to keep in touch with their lawyers.

2.7. ACCESS TO VISITORS

Unconvicted prisoners are entitled to receive as many visits as they liked, following the discretion of the prison or depending on their individual cases. The rights of detainees to communicate with others and to receive visits are fundamental safeguards, against human rights abuses such as torture, ill treatment, and disappearances. According to Principle 19 of the **Body of Principles for the Protection of All Persons under Any form of Detention or Imprisonment**, "a detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations."

In Welikada Prison, there are arrangements made for remand prisoners to be visited each day, for at least a few minutes. However, these rules appear to have changed: it was becoming common for only a few of these visits to be allowed each week for longer periods of time. Remandees are not allowed to have more than one visitor per day, within an allocated time. Remandees are not allowed to use telephones, and have no access to any communication. Persons held in pre-trial detention legally are to be given all facilities to communicate with family and friends and receive visits. These rights are subject to restriction and supervision only as "are necessary in the interest of the administration of justice and the security and good order of the institution." The right to receive visits from relatives is "a fundamental requirement" for ensuring respect for the rights of detainees and the right to protection of the family.

Table 2-7 – Visits from Family Members

Visits	Frequency	Percentage
No	87	58
Yes	63	42
Total	150	100

The 42% of remandees who receive visits do not appear to share the frustration of other remandees who have no contact with their families.

2.8. CONFLICTS AMONG PRISONERS

Prisoners reported almost daily incidences of violence. Very few of these are reported to the authorities. In studying violence among remandees, researchers frequently began with questions such as 'how many are affected, how often and what are the consequences?' Answers to these questions are important in determining the seriousness or magnitude of the problem, but the answers gained were not altogether straightforward.

Table 2 - 8- Conflicts among Remand Prisoners

Reason	Frequency	Percentage
No conflicts	36	24
Food	27	18.0
Old and new	12	8
Sex	5	3.3
Can't stay	8	5.3
Drugs	7	4.7
Space	25	16.7
Water	27	18
Clothes	3	2
Total	150	100

As Table 2-8 shows, there is a high incidence of fights and beatings. 76% of those interviewed stated that they had taken part in conflicts. Violence between prisoners is common and frequently reported; fights between rival groups are daily occurrences. The causes for riots are generally food shortages, lack of clothing and water.

Table 2 - 9 - Sexual Abuse

Sexual abuse	Frequency	Percentage
No	133	88.7
Yes	17	11.3
Total	150	100

According to Table 2-9, 11.3% of prisoners interviewed said they had been abused sexually. It should be noted that statistics obtained for this report may not reflect the accurate occurrences of sexual abuse; as there is often a reluctance to report such incidents.

Table 2 - 10 – Age of Respondent in relation to Sexual Abuse

Age – Years	No – Number & Percentage	Yes – Number & Percentage	Total – Number & Percentage
15-19	9 81.8	2 18.2	11 100
20-24	23 85.2	4 14.8	27 100
25-29	27 87.1	4 12.9	31 100
30-34	21 87.5	3 12.5	24 100
35-39	12 80.0	3 20.0	15 100
40-44	16 94.1	1 5.9	17 100
45-49	10 10.0	- -	10 100
50	13 100	- -	13 100
No Response	-		2 100

As this table indicates, the most victimized are the 20-34 age groups

2.9. COMPLAINTS TO AUTHORITY

Anyone detained or imprisoned has the right to request improvement in their treatment or to complain about their treatment. The authorities must reply promptly and if the request or complaint is refused, it may be brought to the notice of a judicial or other authority.

Table 2 - 11 – Opportunity to complain about Problems/ Conflicts to the Authority

Opportunity	Frequency	Percentage
No	32	21.3
Yes	116	77.3
Do not know	1	0.7
No response	1	0.7
Total	150	100

As Table 2-11 indicates, 21.3% of remandees stressed that there are no opportunities to complain to relevant authorities. According to prisoners, officials ignore or do not listen to complaints regarding facilities, conflicts and so on. Though the officials may be aware of the problems, they do not seek to remedy the situation. According to prisoners, many detainees suffer from mental depression as a result of the treatment from officials.

All law enforcement officials are prohibited from inflicting, instigating or tolerating torture or other cruel, inhumane, degrading treatment or punishment of any person. All international standards impose a duty on States to ensure minimum standards of detention and imprisonment and to protect every detainee's rights while he or she is deprived of liberty. Guards and other officials have no right to torture remand prisoners. Freedom from torture is absolute and non-derogable. It applies to all persons. The prohibition against torture includes acts which cause mental as well as physical suffering to the victim.

Nevertheless, the majority of respondents viewed officials as easily accessible. These persons said that they have access to the authorities at any time and could approach them about any complaint. The majority of remandees said that prison officials were honestly trying to solve their problems.

Table 2 - 12 – Discrimination by Guards

Have been discriminated	Frequency	Percentage
No	28	18.7
Yes	17	11.3
No Response	105	70
Total	150	100

Data obtained in Table 2-12 shows that 11.3% cannot afford to bribe guards. As a result, this category more commonly feels discriminated against by the guards. As a category, they are mostly isolated in the prison. They said that if they bribe the guards they might receive more facilities. However, 18.7% stated that they obtain everything they require, and that they are not subjected to discrimination by the guards.

2.10. WOMEN IN THE REMAND PRISON

At Welikada Prison, women are housed in a special custodial centre. Their living conditions are very harsh. A considerable number of women are kept in custody including some with young children who are born in prison. Newborn babies were living in the same cells as their mothers, in conditions no different from those of other prisoners. Female officials said there have been sexual relationships between the remand prisoners and that they sometimes behave "badly" within the cells. The female section includes all types of suspects such as prostitutes, drug addicts, criminals and smugglers.

Poor prison conditions include low standards of hygiene, which affect women more than men, due to the high incidences of genital and other sexually transmitted diseases. Women's menstruation, reproductive and gendered health needs were not taken into account. Most of the prostitutes interviewed said that they were suffering from several types of sexually contracted diseases.

The majority of the female prison population could not afford the high legal fees because of their lack of economic strength. Although some Non Governmental Organizations (NGOs), such as the Legal Aid Commission, Institute of Human Rights, Home for Human Rights and Women in Need, offer legal assistance to female (as well as to male) prisoners when cases are referred to them, this system does not apply to all female detainees.

2.11. HUMAN RIGHTS EDUCATION FOR INMATES AND OFFICIALS

This study intended to seek information on the prisoners' level of knowledge about their rights. One of the objectives of this research was to find out how both remand prisoners and prison officials can be educated on human rights and the relevant law. It was found that prisoners from low level income families lack any knowledge of their rights.

Table 2 - 13 – Respondents' Level of Education in relation to Knowledge of Remedial Action in case of Harassment and Discrimination

Education level	Knowledge -No Percentage	Yes Percentage	Total Number & Percentage
No education	75	25	24 16
Grade 1-5	47.5	52.5	40 26.7
Grade 6-10	49.1	50.9	57 38
O/L	45	55.	20 13.3
A/L	12.5	87.5	8 5.3
No response			1 0.7
Total	100	100	150 100

It appeared that even those who were educated did not have a clear idea of what their fundamental rights are, and did not appear overly interested in gaining knowledge about them.

2.12. CONCLUSION

The Sri Lankan Constitution and also the Judiciary have generated important jurisprudence in relation to the application of international standards in Sri Lanka, especially for remand prisoners. These principles and rules should be made available in an accessible form to all State institutions, which are responsible for protecting prisoners' rights, to prevent violations from taking place in prison.

The government should solve violations and other problems before situations worsen. If the State has a genuine interest in the situation of prisons it can be solved. The **Prison Ordinance**, does not contain sufficient measures to overcome problems in prison. Furthermore, women inmates, especially expectant mothers should have better facilities and treatment in order to meet their special needs.

The majority of remand prisoners complain of the excessive length of custody in remand, as being aggravated by the slowness of Police investigations and the shortage of judicial officials. In our view, international standards should also be incorporated into domestic law, as well as having training programs and implementing policies for personnel wherever appropriate.

This report aims to generate awareness amongst law enforcement officials of various aspects of prison life, the rights of prisoners and duties of prison authorities. It is hoped that through the dissemination of this report in combination with programs of human rights education, that a new consciousness of the dignity and rights of detainees can be raised.

2.13. RECOMMENDATIONS

- ♦ *Laws relating to prisons should be amended so that as soon as a prisoner under trial completes a period of detention equal to half of the maximum sentence given to him on conviction, he should be released unconditionally*
- ♦ *The atmosphere of a prison should have positive values and the inmates should be exposed to a wholesome environment with opportunities to reform themselves*
- ♦ *Facilities that should be given to prisoners under trial in jail:*
 - *Sufficient space, water and food*
 - *The opportunity to write letters to relatives and friends*
 - *The opportunity to receive visitors*
 - *The opportunity to have interviews with one's lawyer or agent handling the case*
 - *The opportunity to enjoy recreational activities*
 - *Cultural education for personality development*
 - *Protection from mental, physical and sexual abuse*
- ♦ *Prisoners should be classified and separated according to the following:*
 - *Age, sex, health, criminal record and aptitude; thus enabling them to be treated in a manner catering to their needs*
- ♦ *Prison staff should have access to training in areas relevant to their professional development, such as psychology and sociology*
- ♦ *The Government should address the issue of the thousands of poor people who are in jail simply because they could not afford bail or were ignorant of the means of exercising their rights*
- ♦ *In order to address the above issue, the Magistrate should abandon the concept that pre-trial release should be ordered only for money. When considering bail they should assess the social and economic background of the individual*
- ♦ *Prisoners under trial should have the right of franchise. They should be allowed to participate in elections and to cast their votes. The right to franchise is a democratic right and this must be exercised inside or outside the jail with an escort where necessary*
- ♦ *There is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty or *incommunicado* to have free legal service provided by the State. The State is under a constitutional mandate to provide a lawyer to an accused person, if the needs of justice so require, so as to recognize this right*
- ♦ *Prisoners as well as prison officials should be educated on human rights issues and also on domestic law*

Taking the abovementioned steps will see Sri Lanka moving toward fulfilling its international obligations, national policies and ensuring the administration of justice, in relation to remand prisoners.

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