

NEWSLETTER

JANUARY-MARCH 2015

A SUSTAINED COMMITMENT

Addressing overcrowding in prisons

Dear Reader

In February this year, the Ministry of Justice and Labour Relations, supported by the ICRC, brought together its senior officials and key stakeholders in the criminal justice process at a high-level roundtable, which set up a task force to look at the legal and judicial causes of overcrowding in the country's prisons. Additionally, the task force will recommend steps to minimize overcrowding and monitor their implementation. The event was a significant step towards addressing the issue of overcrowding.

While countries are yet to recognize that overcrowding is an issue, and identify the implication of the problems linked to it, a few countries are already working towards developing measures to reduce overcrowding and to develop a fair and balanced approach towards imprisonment. The response of the Government of Sri Lanka has been encouraging. Setting up the task force and the commitment displayed by the stakeholders present at the roundtable are steps in the right direction to address the issue.

The causes of overcrowding are similar in most countries and include socio-economic and legal reasons. Challenges which are inherent in the justice system such as difficulties in implementing bail, delays in the

criminal justice process, the lack or underuse of alternatives to detention, also prevail.

The ICRC, which throughout the world visits places of detention to ensure the welfare of detainees, is observing a worrying trend where in many countries criminal policy is used to address social problems. This systematically leads to an increase in the imprisonment of poor and marginalised populations, which are often charged with petty and non-violent offences, through measures such as mandatory minimum sentencing laws, an increase in the use of long-term sentences and life sentences, changes in eligibility for early release, and the inappropriate use of imprisonment for populations in need of medical care and/or social welfare. The focus is increasingly on the repression of criminality rather than on its prevention.

In countries where punitive criminal justice policies are promoted, non-violent offenders who have committed minor offences are more likely to be detained. Overcrowding in turn hampers the rehabilitation work of the prison services, giving rise to recidivism. Such tough-on-crime policies and rhetoric have also been proven to not be cost effective, because the high cost of maintaining prisons and inmates has a negative impact on the State budget.

Rooting out the causes of overcrowding in prisons involve the collective efforts of multiple stakeholders. The sustained political will of decision makers is required to take ownership to identify the causes of overcrowding, develop measures to combat its causes, monitor the implementation of these measures, and adjust them as necessary over time. In Sri Lanka, the long-term commitment of the Prisons Department, Judiciary, and law enforcement agencies will enable a translation of this process into action, under the leadership of the Ministry of Justice and Labour Relations.

Underscoring this multi-pronged drive will be the role of civil society, including the media to sensitise the public. It is important for the public to understand the social and economic cost of an unusually high incidence of imprisonment, as well as the profile of the majority of detainees (i.e. petty offenders or vulnerable categories of the population) and their plight in prisons.

The ICRC Delegation in Sri Lanka



ICRC

THE FAMILIES OF THE MISSING NEED TO KNOW



M S M Kamilli/ICRC

ICRC's Director of Operations, Dominic Stillhart, addresses a farming community in Kilinochchi supported by the organisation's Community Based Livelihood Support Programme.

The Director of Operations of the ICRC, Dominic Stillhart, who visited Sri Lanka last month, reiterated the organisation's commitment to its humanitarian response to the families of the missing, to persons who are in detention, and to vulnerable households in the former conflict areas.

Mr Stillhart, during an official visit to the country between 16 and 20 March, had meetings with senior government officials including the Prime Minister, Ranil Wickremasinghe, and the Minister of Foreign Affairs, Mangala Samaraweera.

In these meetings, he renewed the organisation's support to the government's efforts to clarify the fate of persons who have gone missing during the past conflict.

"What the families of these missing persons want to know is the fate and whereabouts of their loved one", said Mr Stillhart. "Ascertaining the fate of their missing relative is the best way to bring closure to these families. However, the missing should not be seen through the same prism as

accountability. The ICRC acknowledges that accountability is important, but it will play no role in its process", he explained.

During meetings, a proposal to set up an independent domestic mechanism to clarify the fate of missing persons was discussed. Such a mechanism should be politically independent because it must have the trust of all parties who have been affected. To ensure its independence is strengthened, it should be financially autonomous and established by an Act of parliament. The mechanism should be correctly constituted to represent parties who have been affected, and must therefore include families of missing persons and their representatives such as family associations.

While in the country, Mr Stillhart travelled to the Kilinochchi and Mullaitivu districts to meet with beneficiaries – women-headed households, persons disabled as

a result of the past conflict, and released rehabilitees – of the ICRC's livelihood support programmes. The ICRC provides them cash grants to start or consolidate an income-generating activity to enable them to have a sustainable livelihood. In Kilinochchi, he met with a farming community which receives livelihood support from the ICRC under the Community Based Livelihood Support Programme.

"Livelihood support is given to the most vulnerable in the former conflict areas", said Mr Stillhart. "But at household level, needs remain and more support is required", he added.

Mr Stillhart visited a school in the North, where the ICRC had constructed an overhead water tank, and a community for whom a well was built. These are some of the ICRC's efforts to provide rural returnee communities, including school children, better access to water and sanitation.

He was encouraged by the Sri Lankan authorities' response to address overcrowding in the country's prisons. Recently, the Ministry of Justice and Labour Relations, with the support of the ICRC, spearheaded an initiative to set up a task force of relevant stakeholders to deal with the issue.

As part of the ICRC's support to build the capacity of forensics in the country, Mr Stillhart conveyed to authorities the organisation's willingness to develop guidelines on the management of the dead and deliver training on the management of mass graves.



M S M Kamilli/ICRC

A Water and Habit field officer (far right) relates the water quality testing process to Mr Stillhart and the former Deputy Head of the Colombo delegation, David Quesne (centre).



M S M Kamilli/ICRC

Livelihood support to empower the woman-headed household: Mr Stillhart visits a grocery store run by a beneficiary of the ICRC's Micro Economic Initiatives programme.

SRI LANKA TO START A FORENSIC ANTHROPOLOGY AND ARCHAEOLOGY EDUCATION PROGRAMME

“Human remains are being discovered now – mass graves of skeletal remains that need to be professionally recovered and analysed so that they may contribute to justice processes, and even more importantly, so that the dead may be given back their names, restoring their dignity and honour, and may be returned to their loved ones. Therefore, a true expertise in Forensic Anthropology is essential for Sri Lanka.” - *The ICRC’s Regional Forensic Coordinator for South Asia, Shuala Drawdy*

Steps are being taken to launch Sri Lanka’s first post-graduate Diploma in Forensic Anthropology and Archaeology at the University of Colombo. This decision was taken when Judicial Medical Officers (JMOs) met at a Consultative Workshop on Forensic Anthropology and Archaeology Education, organised by the College of Forensic Pathologists of Sri Lanka (CFPSL) and the ICRC in Colombo on 14 March. Representatives of the Post Graduate Institute of Archaeology (PGIA) and the Secretary to the Ministry of Justice and Labour Relations, Ms Kamalini De Silva, were also present at the workshop, where participants brainstormed the groundwork for the study programme.

The increasing demand on JMOs to recover and examine bones has led to a need to train them in Forensic Anthropology. “We need trained Forensic Anthropologists in the country, and I think the JMOs are the most suitable persons to be trained. The order to examine bones is referred to the JMOs by the Magistrate’s Court,” explained the Chief Consultant JMO of the Institute of Legal Medicine and Toxicology, Dr Ajith Tennakoon.

At the end of the workshop, four committees were established, comprising representatives of the ICRC, PGIA, CFPSL, and the University of Colombo, to deal with the preliminary tasks to consolidate the programme, namely, identifying sustainable sources of funding, recruiting an external Forensic Anthropologist to serve as lecturer, developing a curriculum framework and its timeline for implementation, and setting up a laboratory.

In addition, participants concurred that to maintain standards of teaching, the number of students in a class will be limited to ten. They also discussed infrastructure needs and the requirement to work with other experts.

The ICRC’s Deputy Head of Forensic Services in Geneva, Oran Finegan, highlighted the growing importance of Forensic Anthropology globally, and said the Diploma is a significant step for Sri Lanka to set a precedent in the study of Forensic Anthropology in Asia. “The development of national standards and methods will establish a platform for expansion in the field of Forensic Anthropology education in the region,” he said. Speaking of the participants present, Mr Finegan pointed out that “ultimately, it is their commitment, their approach, that is fundamental to the success of the project.”

Reiterating the need for trained Forensic Anthropologists in Sri Lanka, the ICRC’s Regional Forensic Coordinator for South

Asia, Shuala Drawdy, said “human remains are being discovered now – mass graves of skeletal remains that need to be professionally recovered and analysed so that they may contribute to justice processes, and even more importantly, so that the dead may be given back their names, restoring their dignity and honour, and may be returned to their loved ones. Therefore, a true expertise in Forensic Anthropology is essential for Sri Lanka.” She also emphasised that the programme should be comprehensive and be able to build sustainable local capacity with an “eye to the future”. “It should envision contributing to the Forensic Anthropology research dialogue, not only to develop testing methods specifically applicable to the Sri Lankan population, but also as relevant to worldwide research advances,” she added. Ms Drawdy is currently based in Colombo and is coordinating the launch of the programme.

The ICRC will support the programme by providing technical expertise, and ensure it is followed through until implementation.



Consultant JMO in Matale, Dr Waidyaratne, raises a question during the brainstorming session.



The working groups plan the way forward.



The key speakers (L to R): Chief Consultant JMO of the Institute of Legal Medicine and Toxicology, Dr Ajith Tennakoon, ICRC’s Deputy Head of Forensic Services in Geneva, Oran Finegan, and ICRC’s Regional Forensic Coordinator for South Asia, Shuala Drawdy.

A TASK FORCE TO ADDRESS CAUSES OF OVERCROWDING



Rohan Pradeep Vitharana/ICRC

Deputy Minister of Justice, Mr Sujeewa Senasinghe, lights the oil lamp together with (L to R) Attorney Rigor Pascual and Hon. Justice Roberto Abad (retired) from the Philippines, and Secretary, Ministry of Justice and Labour Relations, Ms Kamalini De Silva.

The Ministry of Justice and Labour Relations convened a high-level roundtable on the legal and judicial causes of prison overcrowding, with the support of the ICRC, in Colombo on 27 February. Stakeholders in the criminal justice process, who have a direct impact on the prison system, gathered around the table to brainstorm and collectively identify key legal and judicial causes of overcrowding in Sri Lanka's prisons, and formed a task force to address these causes.

Representatives of the Ministry of Justice and Labour Relations, the Judiciary, the Attorney General's Department, the Department of Community Based Corrections, the Legal

Aid Commission, the Department of Prisons, the Sri Lanka Police Department, and the Department of the Legal Draftsman, as well as the Commissioner General of Rehabilitation, were present at the roundtable.

Deputy Minister of Justice, Mr Sujeewa Senasinghe, who was the chief guest, expressed the commitment of the Government of Sri Lanka to address the issue of overcrowding. Highlighting the humanitarian side of the issue, he said, "overcrowding in prisons affects not just the prisoners, but also their families. To minimize overcrowding in prisons, steps must be taken to reduce the current prison population."

The task force, made up of representatives with technical expertise from each of the institutions which participated at the roundtable, will debate and develop legislative measures and pragmatic policies to reduce and manage prison overcrowding in Sri Lanka. It is also tasked with advocating for such policies to be adopted by the relevant authorities, ensuring their implementation and monitoring their outcomes.

As such, the task force's primary responsibilities are to:

- examine the legal and judicial causes of prison overcrowding in Sri Lanka, and identify the main causes which must be addressed as a priority;
- develop action plans, identifying the roles of each stakeholder in reducing the prison population;
- monitor overcrowding in prisons and the growth of the prison population, as well as the impact of proposed policies and methods on reducing prison overcrowding; and
- advocate and promote its policies with the relevant authorities and to a larger audience.

Identifying the need for an inter-institutional approach, during her welcome address, Secretary to the Ministry of Justice and Labour Relations, Ms Kamalini De Silva, said that institutions present in the room were as much a part of the causes of overcrowding as they were its solution. "We are all a part of the process of overcrowding and I call on all stakeholders to work together," she added.

Two legal experts from the Philippines, a retired Supreme Court Judge, Justice Roberto Abad, and an Attorney currently attached to the Supreme Court, Mr Rigor Pascual, were invited by the Ministry of Justice and Labour Relations to share their experiences and lessons learnt in the implementation of measures to address



Joanna Atkinson/ICRC

Judge of the Supreme Court of Sri Lanka, Hon. Justice Buwaneka Aluwihare, delivers the keynote address.

IN SRI LANKA'S PRISONS



Joanna Atkinson/CRC

Hon. Justice Roberto Abad shares the Philippines' experience of prison overcrowding and steps taken to address it.

prison overcrowding in their country, particularly in jails in Manila. They facilitated a vibrant discussion among participants, together with Hon. Justice Buwaneka Aluwihare of the Supreme Court of Sri Lanka, who delivered the keynote address.

During the discussion it became clear that the task force will need to review existing legislation and assess the effectiveness of its implementation, and also examine

the obstacles to bail and alternatives to imprisonment.

Issues relating to bail, both socio-economic and legal, were identified as key factors contributing to overcrowding. From a legal perspective, Justice Aluwihare questioned whether the effectiveness of the existing provisions pertaining to the granting of bail can be improved. He also highlighted the socio-economic problem of bail, emphasising

that in instances where bail is granted by the police or courts, many detainees, owing to their socio-economic status, are unable to furnish bail and therefore remain in remand prison. "Shouldn't there be a review mechanism in relation to such detainees or should we ignore them and allow them to be incarcerated for an indefinite period of time?" Justice Aluwihare asked.

Justice Abad said, "Consequently, in the Philippines, bail for the very rich and the very poor are the same. Many among these very poor are first-time offenders, held for non-violent crimes, and have children to feed and look after. Quite shamefully, our bail system has been anti-poor."

Participants also considered incarceration as a last resort and discussed possible alternatives such as probation, parole and community-based correction.

Addressing the issue of prison overcrowding in Sri Lanka is a long-term process, requiring consistent coordination among the stakeholders of the criminal justice system. This will be achieved through the task force, which is well on its way.



Joanna Atkinson/CRC

Participants engaged in discussion during the brainstorming session, as the panel of experts facilitates.

MOOTING INTERNATIONAL HUMANITARIAN LAW IN HONG KONG



The teams from South Asia (Sri Lanka, India, and Bangladesh) together with the organisers from the Hong Kong Red Cross.



The team from Sri Lanka, (L to R) Sajith Bandara, Yanitra Kumaraguru (coach), Nabeela Raji, and KC Yadavan, outside the Hong Kong High Court.

“Compared to public international law for instance, IHL is constantly evolving. At the regional round in Iran, we dealt with cyber warfare, while at the Asia Pacific round it was disputed territories. It was a wonderful experience to hack the nitty-gritties of IHL,”

- Sajith Bandara, a member of the team from Sri Lanka

Twenty four teams of undergraduate law students rose to the challenge of defending or prosecuting “General Smith of the Midlands Armed Forces” in a simulated trial at the 13th Red Cross International Humanitarian Law (IHL) Moot in Hong Kong, this year. General Smith stood accused of three charges of war crimes, namely, sexual violence towards women and children, seizing and destroying historical artefacts, and attacking civilians, under Articles 8(2)a, 8(2)b, and 7 of the Rome Statute of the International Criminal Court – crimes common in real-life situations of armed conflict today.

The students, who were from universities from 22 countries, mooted in the competition

in Hong Kong, which is co-organised annually by the Hong Kong Red Cross and the ICRC for the Asia-Pacific region. It was held from 12-14 March.

When States ratify the Geneva Conventions, they expressly commit themselves to spreading knowledge of IHL, and one effective way of doing that is to integrate IHL in university curricula and organise events such as the moot court competition. This generates interest among students, and provides them an opportunity to practice what they learn in the classroom. It also creates awareness of current IHL issues in academic circles around the world, as moot court competitions take place in almost all regions in which the Red Cross and Red Crescent Movement is active.

The Hong Kong Red Cross IHL Moot was first held in 2003, with the aim of raising awareness of international humanitarian issues vis-à-vis IHL among law students in the country and from universities in East and South East Asia. The competition grew to include other countries in the Asian region and the Pacific with the support and coordination of the ICRC, which joined the Hong Kong Red Cross as a co-organiser in 2005. Currently the largest inter-university competition on a scale of its kind in the Asia-Pacific region, it has seen approximately 850 law students from 22 countries compete over the years.

Sri Lanka was represented by a team from the Faculty of Law of the University of Colombo. Having won the national and South Asia regional competitions, the team rose to the quarter finals of the Asia-Pacific moot – the only team from South Asia to qualify for the quarter final round. The national competition held in September 2014 was their first IHL moot experience.

Yanitra Kumaraguru, the team’s coach, looks back on the experience as a rewarding one. “Members of the team grew as mooters from the national to regional and Asia Pacific rounds, and it was great to see them break as quarter-finalists in fifth place among all the teams that participated in the preliminary rounds,” she said.

According to Sajith Bandara, a member of the team, ICRC’s moot court competition inspired his interest in IHL. “It was one of the best moots I have taken part in of the few moots I participated in at university”, he said. Sajith found the experience unlike others, owing to the broad nature of this body of law, with its constant evolution in view of the complexity of today’s armed conflicts. “Compared to public international law for instance, IHL is constantly evolving. At the regional round in Iran, we dealt with cyber warfare, while at the Asia Pacific round it was disputed territories. It was a wonderful experience to hack the nitty-gritties of IHL,” he recalled.

EDUCATING UN PEACEKEEPERS ON THE LAW OF ARMED CONFLICT

In keeping with its mission to protect the lives and dignity of victims of war and other situations of violence, and to provide them with assistance, one way in which the ICRC ensures respect for the rights of people affected is by spreading knowledge of international humanitarian law (IHL) or the 'law of armed conflict' among armed forces. This is also extended to UN peacekeeping forces deployed to countries in a conflict or post-conflict situation. Because the ICRC is also present in the same country, it is able to share the prevailing problems from a humanitarian angle and explain the way it works as an organisation. This can help overcome difficulties on the ground once the units are deployed.



ICRC Communication Officer and a former Officer of the Sri Lanka Air Force, Channa Jayawardene, conducts a pre-deployment briefing for a contingent being dispatched to Haiti.

In Sri Lanka, the Institute of Peace Support Operations Training Sri Lanka (IPSOTSL) has been training local peacekeeping forces since 2004. The ICRC supports IPSOTSL in this endeavour by conducting sessions on IHL, prior to a contingent's deployment. The ICRC conducted its first IHL programme at IPSOTSL in 2005, for the second contingent the country deployed to Haiti on a UN Stabilisation Mission.

Forces are essentially taught IHL Obligations in Peace Support Operations (UNSG Bulletin, 13/1999), the ICRC's activities worldwide and in the country of deployment, and are briefed on the humanitarian situation on the ground.

A Communication Officer at the ICRC and former Officer of the Sri Lanka Air Force, Channa Jayawardene, who has been conducting the ICRC's pre-deployment IHL training at IPSOTSL since 2011, says that participants find it very helpful. "The pre-deployment briefing on the humanitarian situation on the ground gives them context and helps them to prepare themselves mentally for the task that lies ahead," he explains.

Recognising the complexities of a peacekeeping operation and hence the need for in-depth training before embarking on such a mission, IPSOTSL trains peacekeepers for employment in all types of UN Peace

Support Operations. It deploys armed force contingents to Haiti, medical contingents to South Sudan, Army contingents to Lebanon, and Air Force contingents to the Central African Republic.

As the nature of conflict has evolved globally, so has the mandate of peacekeeping missions, and in turn the role of the peacekeeper.

At the 69th session of the United Nations, General Assembly, in New York on 31 October 2014, the ICRC stated, "The mandates of peacekeeping missions have grown increasingly complex in recent years. Peacekeeping has moved beyond its traditional role of monitoring peace agreements to focus as well on the rule of law, security sector reforms, humanitarian assistance and the protection of civilians, to name but a few dimensions."

Thus it is crucial that peacekeepers know and understand the body of law which governs their actions and operations. Understanding the situation on the ground prior to embarking on the mission is equally important, as the applicability of IHL to UN forces is determined by the circumstances on the ground, as well as by specific legal conditions stemming from the relevant provisions of this body of law, irrespective of the international mandate assigned to UN forces by the Security Council.

In its role of promoter and guardian of IHL, the ICRC remains committed to providing armed forces, including peacekeepers, adequate training and resources to ensure they have the knowledge required to effectively perform the tasks assigned to them. In view of the complex and volatile character of today's conflicts, this is of utmost importance.

Year	UN peacekeepers trained by the ICRC at IPSOTSL:
2011	3,977
2012	2,019
2013	2,215
2014	1,790
2015	1,052



The Institute of Peace Support Operations Training Sri Lanka (IPSOTSL) in Kukuleganga – training local peacekeeping forces since 2004.

FACTOID

ICRC ACTIVITIES: JANUARY-MARCH 2015

SUPPORT TO THE SRI LANKA RED CROSS SOCIETY (SLRCS)



399 volunteers from 15 districts sat an island-wide basic first aid examination.

Provided two major first aid services for pilgrims visiting places of worship in Talawila and Ratganga.

Continued to provide the National Society financial, technical and material support to re-establish its branches in Kilinochchi and Mullaitivu.

SUSTAINING LIVELIHOODS AND PROVIDING ACCESS TO SANITATION AND SAFE DRINKING WATER



355 households were assessed in the Northern and Eastern provinces for the Micro Economic Initiatives programme.



2,100 detainees benefitted from the construction of two toilet blocks (24 latrines) with septic tanks (including two water tanks and eight urinals) in the Mahara prison.

ADDRESSING THE NEEDS OF FAMILIES OF MISSING PERSONS



207 families of the missing were individually met with, to understand their administrative, economic, legal, and psychosocial needs, covering six provinces (Central, Eastern, Northern, Southern, Uva, and Western), comprising 15 districts (Badulla, Batticaloa, Colombo, Galle, Gampaha, Jaffna, Kalutara, Kandy, Kilinochchi, Matale, Matara, Moneragala, Mullaitivu, Nuwara Eliya, and Vavuniya).



320 Army Officers following the refresher courses at the Army Training School, Maduruoya, and 170 Army Officers at the Infantry Training Centre, Minneriya, participated in an IHL programme.

PROMOTION OF INTERNATIONAL HUMANITARIAN LAW (IHL)

79 medical personnel to be deployed to the Level 2 hospital run by the Sri Lanka Army Medical Corps in Bor, South Sudan, and 34 Army Officers following the UN Potential Staff Officer Course participated in IHL programmes at IPSOTSL, Kukuleganga.

22 Army Civil Military Cooperation Officers at the Armoured Corps Camp, Modara, Colombo, participated in an IHL briefing.

6 Army, five Navy, and five Air Force IHL Instructors participated in a two-day Advanced Seminar on IHL at the Sir John Kotelawala Defence University.

31 commanding officers and second-in-commands and 11 senior officers participated in programmes on Military in Law Enforcement at the Security Forces Headquarters, Wanni.



DETAINEE WELFARE

467 families exchanged news via Red Cross Messages and oral messages over the phone.

266 families of detainees received allowances to enable them to visit their relatives in detention.

21 detention visits were carried out in 15 places of detention.

1,500 detainees in seven places of detention received ad hoc assistance in the form of cleaning materials, hygiene and recreational items.

More than **300** detainees benefitted from the renovation of a ward in the Batticaloa remand prison.

Supported three prison officials to attend the 4th Asian Conference for Correctional Facilities for Architects and Planners in Myanmar.



MIGRATION

65 refugees received travel documents to travel to their countries of resettlement.

Supported the SLRCS in maintaining family links for migrants (both Sri Lankans living abroad and foreigners in Sri Lanka).



ICRC

International Committee of the Red Cross
29, Layards Rd, Colombo 05
Sri Lanka
T + 94 (11) 250 33 46 F + 94 (11) 250 33 48
E-mail: col_colombo@icrc.org www.icrc.org