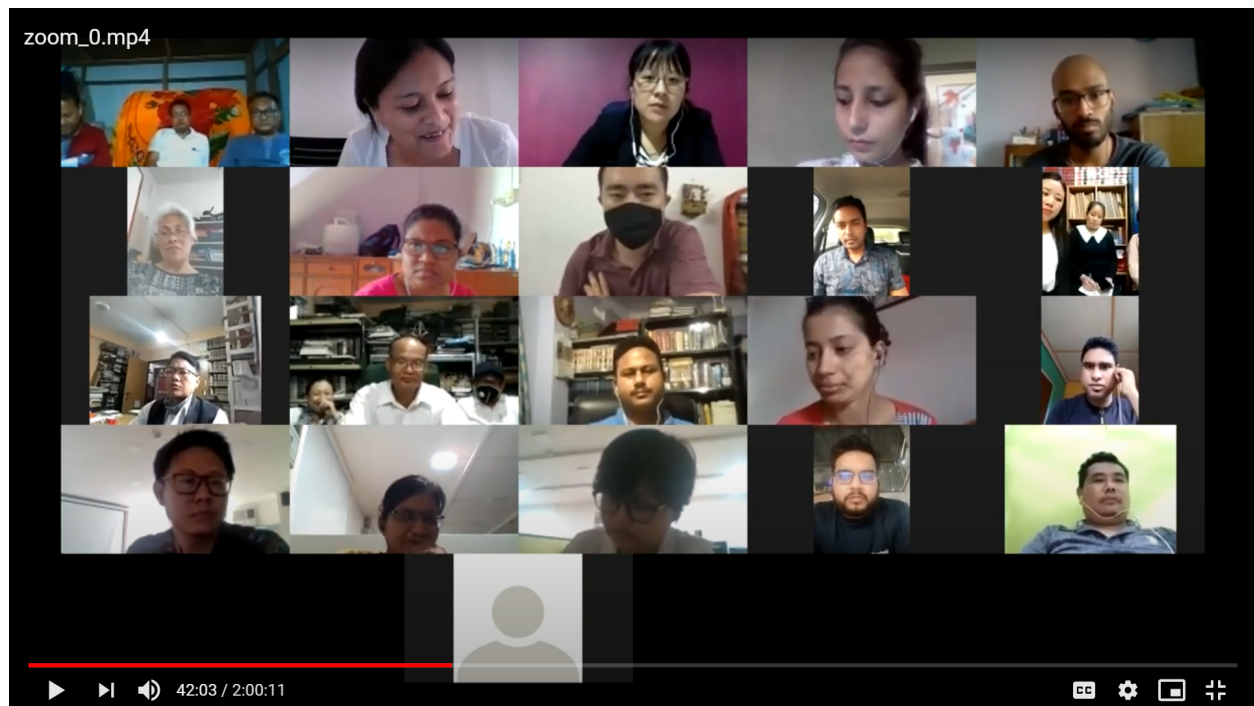


***REPORT ON THE FOLLOW-UP MEETING
ON “PRISONERS’ RIGHTS – RESPONSE
TO COVID-19 PANDEMIC IN NORTHEAST
INDIA”***

Date: 2.7.2020

Time: 4 p.m. – 6 p.m.



Schedule for the webinar

Time	Session	Speaker
04:00-4:15	Summary of the previous meeting	Ritu Kumar, Adv
04:15-4:30	PILs on prisoners' rights in Northeastern states	Olivia Bang, Adv
04:30-4:45	Situation in Sikkim's Prisons and Strategic Litigation	Mingma Lhamu Sherpa, Adv
04:45-5:00	Situation in Meghalaya's Prisons and Strategic Litigation	Agnes Kharshiinng, Social Activist
05:00-5:15	Situation in Assam's Prisons & Strategic Litigation	Nandita Deka, Adv
05:15-5:30	Situation in Nagaland's Prisons & Strategic Litigation	Neiteo Koza, Adv
05:30-5:45	Situation in Mizoram's Prisons & Strategic Litigation	Rosalynn Hmar, Adv
05:45-6:00	Situation in Manipur's Prisons & Strategic Litigation	Rakesh Meihoubam, Adv

A webinar on prisoners' right in the context of COVID-19 pandemic in the Northeastern states was held on 5.6.2020 which was attended by members of HRLN as well as by members from two reputed organisations, Commonwealth Human Rights Initiative (CHRI) and Human Right Alert (HRA). As a follow up to that meeting, a second meeting was held on 2.7.2020 which was attended primarily by members of HRLN's office in the northeastern states as well as by members from HRLN's Delhi and Maharashtra offices. The meeting commenced with a recapitulation of the discussion held in the previous meeting.

Summary of the previous meeting

Speaker: Ritu Kumar, Advocate

In the previous meeting, Ritu Kumar discussed the orders passed by the Supreme Court of India with regard to decongestion of prisons, release of juveniles from child protection homes and release of declared foreigners from detention centres, especially in *Suo Motu W.P.(C) No. 1/2020* were discussed. One of the important orders was for the constitution of High Powered Committees in all states and Union Territories to determine which class of prisoners can be released on parole or on interim bail for such period as may be thought appropriate. Another order was passed for release of those detainees who had spent more than two years in detention centres. Other judgements, although not passed in the context of a pandemic but which are otherwise relevant during the pandemic too such as *Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273* and in *re Inhuman Conditions in 1382 Prisons, (2016) 3 SCC 700, (2016) 3 SCC 700* had been discussed as well. All the orders are available in a Google Drive folder, the link of which has been shared with the participants.

There was then a session by Sauradeep Dey on Foreign Prisoners and Strategic Litigation where salient features of the Guidelines cum Standard Operating Procedure (SOP) dated 29.12.2011 circulated by the Ministry of Home Affairs for dealing with foreigners who claim to be refugees were thrown light upon. The SOP mainly deals with the procedure for grant of Long Term Visa to such persons which is usually granted for one year and renewable for five years. As per it,

when Long-Term Visas are not granted to such persons, they can be released after collection of their biometric data and on furnishing local sureties.

Nandita Deka had then spoken about the situation in Assam and pointed out the number of prisons in the state. She mentioned there were 8938 prisoners in the jails out of which 3577 were released after passing of the Supreme Court order regarding constitution of High Powered Committees. She also mentioned that there have been further arrests during the lockdown. A Suo Motu PIL had been taken up by the Gauhati High Court in 2018 wherein the High Court had noted that following the filing of a report by the State Government on the present condition in the jails, a Commission would be constituted to visit the jails and clarify whether the report is correct or not.

Amrita from CHRI had pointed out that unnecessary arrests still continue despite the directions passed by the Supreme Court in Arnesh Kumar judgement. She shared her experience from her visits to prisons in the Northeast and pointed out that Assam has a problem of overcrowding in prisons whereas the other Northeastern states do not have that problem. Access to legal aid is a major problem in these states and there is a gap in communication between the prisoners and their lawyers. A reason for this is the physical constraints resulting from jails being located in districts different from the one where the courts are. Infrastructure of the jails is not good.

Archana Rupwate mentioned about the Guidelines issued by the World Health Organisation (WHO) and said that they could be used for the release of prisoners.

Rakesh from Manipur had discussed the problems in jails of Manipur. He had mentioned that there are two main jails, one for men with a capacity of 845 and the other for women with a capacity of 250. There are a few sub-jails as well but some of them are non-functional. A PIL had been filed for revival of these sub-jails which is still pending. He spoke about a PIL on overcrowding in the jails and the shortage of staffs in jails. The PIL had been disposed of with a direction for recruiting staffs in the jails. He also mentioned that 152 prisoners had been released during the lockdown and one institute had been set up as a quarantine centre for prisoners. Overcrowding is not a problem in the jails of Manipur but the condition of lock-ups in the state is not good. A PIL had been filed by HRLN in the High Court for improvement of the condition in

lock-ups. Another issue pointed out by Rakesh was the non-production of under-trials before the Court.

About Nagaland, Koza had shared her experiences of jail visits while she was working with the State Legal Services Authority. She had highlighted that the infrastructure of jails is not good and the quality of medical aid available in the jails is poor. Vocational training programmes are not conducted for prisoners as a result of which people are not rehabilitated and they tend to re-commit crimes after their release.

PILs on prisoners' rights in Northeastern states

Olivia Bang, Advocate

Olivia shared a list of Suo Motu PILs on prisoners' rights taken up by the High Courts of the different states of Northeast. She began with Meghalaya where PIL No. 9/2017 was taken up following the order passed by the Hon'ble Supreme Court on 15.9.2017 in *Re-Inhuman Conditions in 1382 Prisons*. The case was disposed of and the report filed by the State Government in the matter showed just two custodial deaths in Meghalaya from 2012 to 2015 which projects an incomplete picture.

In Manipur, PIL No. 20/2018 is pending on the issue of vacancies in sanctioned posts in jails necessary for the administration of jails. There was PIL No. 21/2018 which deals with the problem of overcrowding in prisons. Another Suo Motu PIL i.e. PIL No. 30/2017 was registered after the order dated 15.9.2017 was passed by the Supreme Court in *Re-Inhuman Conditions in 1382 Prisons* and deals with the issue of custodial deaths. Our units must find out more about the progress of these cases.

In Assam, PIL No. 8/2018 is pending on the issue of overcrowding in Assam's prisons. PIL No. 9/2018 is pending on the issue of vacancies in sanctioned posts in Assam's prisons. These PILs encompass the situations in the prisons of Arunachal Pradesh, Mizoram and Nagaland as well since the Gauhati High Court is the designated High Court for four states. In another PIL i.e. PIL No. 6/2017 which deals with custodial deaths, the Gauhati High Court had observed in its order dated 2.5.2018 that there had been 16 custodial deaths in Assam, one in each state of Nagaland

and Mizoram and none in Arunachal Pradesh during the period 2012-2016. It was noted that four Committees have been constituted for better living conditions and upliftment of convicts residing in the jails of Assam. In another order dated 4.6.2018, it was also directed that Rs. 3,00,000 should be provided to the next of kin of persons who died of natural causes in the prisons. In the same order, it was also noted that in Mizoram, an amount of Rs. 3,00,000 was paid to the mother of one Lalnunzuava who died an unnatural death in prison; Arunachal Pradesh Government has also sanctioned payment of Rs. 3,00,000 each to next of kin of two deceased prisoners; and Nagaland is yet to report payment of Rs. 3,00,000 to the next of kin of the sole person who died an unnatural death in prison. The State of Nagaland was directed to pay the amount of Rs. 3,00,000 within one month.

The High Court of Sikkim had also registered three PILs, one on vacancies in sanctioned posts in prisons, another on overcrowding and the third on the condition of prisons. In the third matter, a report was submitted by the Amicus Curiae pointing out the unhygienic conditions in the jail. Another Suo Motu PIL had been registered following the order dated 15.9.2017 passed by the Hon'ble Supreme Court of India. A number of orders passed in the matter were mentioned.

Situation in Sikkim's Prisons and Strategic Litigation

Mingma Lhamu Sherpa, Advocate

Recently, Mingma has worked on two cases pertaining to prisoners' rights. One was regarding a custodial death when a boy died after being arrested under the Anti-Drugs Law. It has been reported to be a suicide. Mingma is in touch with the boy's family and a FIR has been filed even though the police were initially reluctant to register the FIR. A RTI application has also been filed to get a copy of the Magisterial Inquiry Report.

In another case, a Bangladeshi man came to work in Sikkim but he only had a Tourist Visa and a Passport although a Special Permit is required to enter Sikkim. After the lockdown, like other migrant labourers, this particular man too tried to return from Sikkim but was detained at the check post. She appeared in the person's bail application and during the pendency of the case, the Chief Judicial Magistrate and the Police Department were both very kind and helpful. Even

though the bail was denied, the Magistrate directed the police to file a charge-sheet in the matter at the earliest. The charge-sheet was filed within a month and after a discussion with the Chief Judicial Magistrate, the accused was sentenced to Simple Imprisonment for just one month and thereafter deported to Bangladesh.

As regarding the release of prisoners in Sikkim following the constitution of the High-Powered Committee, it has been learnt that no person has been released as there is no problem of overcrowding in Sikkim's jails. Whereas certain guidelines for ensuring Video Conferencing in all jails were circulated and the same have been implemented.

Situation in Meghalaya's Prisons and Strategic Litigation

Agnes Kharshiing, Social Activist

Agnes has filed an application under the RTI Act seeking information about the number of prison inmates in Meghalaya and how many of them are under-trial and how many are convicts. As per her knowledge, there is overcrowding in the prisons of Meghalaya and because of this, it would not be possible to maintain social distancing in the jails.

The issue regarding provision of compensation to custodial death victims has still not been resolved. On 31st May, 2009, there was a sensational jailbreak from the prison in Meghalaya, but on the very next day, the leader of the persons who had escaped was killed. It was later learnt that the person had first been arrested and then killed. A FIR was registered in this regard but the police filed Final Report citing lack of evidence. Agnes had filed two more FIRs in connection with the same case after taking out more information but on the other two occasions as well, Final Reports were filed. She had opposed the Final Report as well before the Learned Magistrate who directed an investigation by the Superintendent of Police (SP). No SP could complete the investigation and was changed on multiple occasions.

In another case, a boy was killed in custody in Tura. Both these cases were not mentioned about in PIL No. 9/2017 before the Meghalaya High Court. The mother of the boy killed in Tura was

paid compensation only last year. A Departmental Proceeding was initiated in this matter but Agnes believes it will be fruitless as the Department would try and protect its own person.

As regards the efficiency of the legal aid system in Meghalaya, Agnes has learnt that a number of lawyers empanelled with the State Legal Services Authority are not serious at their job and they do not go and visit the prisons.

Situation in Assam's Prisons and Strategic Litigation

Nandita Deka, Advocate

Much was already mentioned about the situation in Assam in the previous meeting. Without repeating herself, Nandita mentioned that the Assam team is looking to conduct awareness programmes in the jails of Assam. Nandita has already spoken to the Secretary of Nagaon District Legal Services Authority and they are interested in organising a legal awareness camp in the Nagaon District Jail. It will be a great opportunity for the HRLN team of Assam as they have not been given access to the jails for the last five years. If the Nagaon camp takes place successfully, the team may get more opportunities to conduct more awareness programmes in different districts of the state. Representations in this regard would also be filed.

Nandita had also filed 31 applications under the RTI Act, one in each jail of Assam, and she had received replies to around 22 of her applications. From them, she learnt that compensation has not yet been paid to kin of all who had died unnatural deaths in the prisons. She also learnt that there is discrepancy in the process of identifying whether a death is a natural one or an unnatural one. She has observed that certain deaths were in the nature of murder as can be seen from the cause of death report but they have still been categorised as natural deaths.

The Assam team is also trying to assist prisoners in the Guwahati Central Jail. Winter clothing was provided to five Rohingya prisoners who have continuously been in jail for about two years since they arrived in India. The medical facilities and the quality of food are also questionable in the jails and these matters need more attention.

Situation in Nagaland's Prisons and Strategic Litigation

Neiteo Koza, Advocate

Neiteo did not have any more information to add to what she had already shared in the last webinar. She only informed that she has filed an application under the RTI Act regarding custodial deaths. She also requested the other members to share the format of an impleadment application with her.

Situation in Mizoram's Prisons and Strategic Litigation

Rosalynn Hmar, Advocate

Rosalynn thinks 4-5 PILs have to be filed in connection with the situation in prisons in Mizoram. She shared that there are cases of corruption, encroachment of the Central Jail and revision of the pay scale of the jail staffs which has not been revised since 2003. There is one Central Jail and eight District Jails in Mizoram. The quality of food provided in the jails is also very poor and it seems only Rs. 30000 per quarter has been sanctioned for food for the inmates. The medical facilities made available to the prisoners are also not up to the mark. The Pharmacy does not have sufficient medicines. There is one doctor and three nurses who visit the jail on four days in a week. She also shared the particular case of a Chinese individual who was arrested without any charges. He does not speak any English and has thereby been in jail since March, 2019. She sought suggestions regarding this particular case. The participants suggested that a petition for engaging an interpreter could be moved.

Situation in Manipur's Prisons and Strategic Litigation

Meihoubam Rakesh, Premlata Thokchom and J. Hillson Angam, Advocates

PIL No. 30/2017 was a case connected to custodial deaths and payment of compensation to kin of the victims. The issue was similar to the one raised in two other PILs i.e. 29/2017 and 4/2018. They were heard together and disposed of by order dated 24.9.2018 with a direction to frame a victim compensation scheme. Accordingly, the Manipur Victim Compensation Scheme was framed and implemented on 22.7.2019.

In PIL No. 20/2018 which was regarding vacancies in sanctioned posts in prisons, a report was submitted to the Court wherein it was stated that there are 574 sanctioned posts out of which only 373 have been filled leaving 201 posts vacant. Out of the 201 vacant posts, recruitment process was commenced during the pendency of the case for 151 posts. Now there are 50 more vacant posts and as per the report, these posts are vacant as there aren't eligible existing staffs for being promoted to these posts. Observing these facts, the case was disposed of.

Then, PIL No. 21/2018 was taken up Suo Motu and concerned overcrowding in prisons. It was observed that the jails of Manipur had a capacity of 1095 but occupancy at the time was 856. Thereby, noting that there is no overcrowding, the case was disposed of with the liberty to reopen the matter if the need ever arises.

Recently, following the constitution of the High-Powered Committee, 152 prisoners have been released in accordance with the norms laid down by the Committee.

In addition to these PILs, HRLN's Manipur unit is also doing a number of custodial death cases where they have filed for compensation.

The Manipur team of HRLN has also often been invited by the District Legal Services Authority to the Manipur jails to conduct awareness programmes. HRLN member, Premlata, is also empanelled with the District Legal Services Authority and thereby visits jails.

Premlata also shared information about a PIL relating to the Reproductive Rights of inmates of Manipur's women's jail. She was informed by the Chief Judicial Magistrate of Manipur that pregnant women in the jail were living in very poor conditions and they had to bear their own pregnancy-related medical expenses. Following this, Premlata was permitted to visit the jail and she prepared a report of her observations and on that basis a PIL was filed before the High Court. The High Court directed the District and Sessions Judge to visit the jail and file a report in this

regard. The High Court later constituted another committee of lawyers to visit the jail and they submitted their report to the High Court after their visit. Due to this PIL, there was much improvement in the jail management and improved facilities were available to the inmates.

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