



**Optional Protocol to the
Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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SUBCOMMITTEE ON PREVENTION OF TORTURE

**REPORT ON THE VISIT OF THE SUBCOMMITTEE ON PREVENTION
OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT TO THE MALDIVES* ****

* In accordance with the decision of the Subcommittee on Prevention at its fifth session regarding the processing of its visit reports, the present document was not edited before being sent to the United Nations translation services.

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Preliminary remarks

1. The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) was established following the entry into force in June 2006 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).¹ The SPT began work in February 2007.

2. The aim of the OPCAT is “to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty”,² in order to prevent ill-treatment. The term ill-treatment should be interpreted in its widest sense, to include *inter alia* ill-treatment arising from inadequate material conditions of deprivation of liberty. The SPT has two pillars of work: visiting places of deprivation of liberty to examine current practice and system features in order to identify where the gaps in the protection exist and which safeguards require strengthening; and assisting in the development and functioning of bodies designated by States parties to carry out regular visits - the national preventive mechanisms (NPMs). The SPT focus is empirical - on what actually happens and what practical improvements are needed to prevent ill-treatment.

3. Under the OPCAT, a State party is obliged to allow visits by the SPT to any places under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.³ States parties further undertake to grant the SPT unrestricted access to all information concerning persons deprived of their liberty and to all information referring to the treatment of those persons as well as their conditions of detention.⁴ They are also obliged to grant the SPT private interviews with persons deprived of liberty without witnesses.⁵ The SPT has the liberty to choose the places to be visited and the persons to be interviewed.⁶ Similar powers are to be granted to NPMs, in accordance with the OPCAT.⁷ The work of the SPT is guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity, in accordance with article 2, paragraph 3, of the OPCAT.

4. Whether or not ill-treatment occurs in practice, there is always a need for States to be vigilant in order to prevent ill-treatment. The scope of preventive work is large, encompassing any form of abuse of people deprived of their liberty which, if unchecked, could grow into

¹ A/RES/57/199, 9 January 2003.

² OPCAT, art. 1.

³ OPCAT, arts. 4 and 12 (a).

⁴ OPCAT, arts. 12 (b) and 14, para. 1 (a) and (b).

⁵ OPCAT, art. 14, para. 1 (d).

⁶ OPCAT, art. 14, para. 1 (e).

⁷ OPCAT, arts. 19 and 20.

torture or other cruel, inhuman or degrading treatment or punishment. The SPT's preventive approach is forward looking. In examining examples of both good and bad practice, the SPT seeks to build upon existing protections and to eliminate or reduce to a minimum the possibilities for abuse.

5. The prevention of torture and other cruel, inhuman or degrading treatment or punishment proceeds from the respect for the fundamental human rights of persons deprived of their liberty in whatever form of custody they may find themselves. The visits of the SPT to States parties to the OPCAT centres on determining which factors may contribute to, or inhibit, situations conducive to ill-treatment, in order to make recommendations to prevent ill-treatment from happening or from recurring. In this sense, rather than merely checking or verifying whether torture has occurred, the SPT's ultimate aim is to anticipate and forestall the commission of torture by persuading States to improve the system of functioning safeguards to prevent all forms of ill-treatment.

Introduction

6. In accordance with articles 1 and 11 of the OPCAT, the SPT visited the Maldives from Monday 10 December until Monday 17 December 2007.

7. In this first visit to the Maldives by the SPT, the delegation focused on the development process of the national preventive mechanism and the situation, as far as protection against ill-treatment, of people deprived of their liberty in police facilities, prisons, facilities for children and in drug rehabilitation centres.

8. The delegation consisted of the following members of the SPT: Mr Hans Draminsky Petersen (head of delegation), Ms. Marija Definis-Gojanovic, Mr. Zdenek Hajek, Mr. Zbigniew Lasocik, Mr. Victor Rodriguez Rescia, Mr. Miguel Sarre. The delegation was accompanied by Mr. Mark Kelly and Mr. R. Vasu Pillai, experts.

9. The SPT members were assisted by Ms. Claudine Haenni Dale, SPT Adviser, and by Mr. José Doria and Mr. Edo Korljan, staff members of the Office of the United Nations High Commissioner for Human Rights (OHCHR), as well as by interpreters.

10. During its visit to the Maldives, the delegation reviewed the treatment of persons deprived of their liberty and made observations and conducted private interviews with people deprived of their liberty in various types of institutions: 12 police facilities, including police stations and police detention centres, and two prisons. It also visited two prisons under construction, an education and training centre for children, a home for children in need and one drug rehabilitation centre.⁸ In addition, the delegation visited the Maldives National Security Service training centre at Girifushi.

⁸ For a full list of places of deprivation of liberty visited, see Annex I.

11. In addition to visiting places of deprivation of liberty, the SPT had discussions with public authorities and members of civil society in order to gain an overview of the legal framework regarding the administration of criminal justice and places of deprivation of liberty and of how the system was functioning in practice. The delegation also held meetings with representatives of complaints and monitoring bodies and with the members of the HRCM who very shortly before the visit were appointed by the Government to form the National Preventive Mechanism (NPM).⁹

12. At the end of the visit, the delegation presented to the Maldivian authorities its preliminary observations concerning the visit in confidence.¹⁰

13. The following report on the first SPT visit to the Maldives, produced in accordance with article 16 of the OPCAT, sets out the findings of the delegation and the SPT's observations and recommendations concerning the treatment of people deprived of their liberty, in order to improve the situation as regards the protection of such persons from all forms of ill-treatment. The visit report is an important element of the dialogue between the SPT, the Maldivian authorities and civil society aimed at preventing torture and other cruel inhuman or degrading treatment or punishment. In principle, the report is confidential until such time as the authorities of the Maldives request publication.¹¹

14. The first chapter of the visit report looks at the legal and institutional framework in the Maldives from the perspective of prevention of torture. Situations favourable to torture may arise from the lack of an appropriate legal and institutional framework guaranteeing the rights of persons deprived of their liberty.

15. One of the crucial factors inhibiting ill-treatment is the existence of a fully functioning system of independent visits to monitor all places where persons may be deprived of their liberty. For this reason, the second chapter of the report is devoted to a discussion of the development of the national preventive mechanism (NPM) in the Maldives.

16. In subsequent chapters of the report the SPT examines the concrete situations of people deprived of their liberty in different settings visited in the light of those safeguards and the access thereto, which the SPT considers will, if properly established and/or maintained, diminish the risk of ill-treatment of persons deprived of their liberty. The SPT makes recommendations concerning changes to improve the situations encountered and to ensure the development and improvement of a coherent system of safeguards in law and in practice.

⁹ A full list of officials and others with whom the delegation met can be found in Annex II.

¹⁰ See paragraph 4 and footnote 8.

¹¹ OPCAT, art. 16, para. 2.

I. FORMAL SAFEGUARDS AGAINST ILL-TREATMENT

17. The SPT considered those elements of the legal and institutional framework with the potential to provide safeguards for persons deprived of their liberty and those potentially contributing to the risk of ill-treatment.

A. Legal Framework - primary legislation, regulations and instructions/codes

1. The Constitution of the Republic of Maldives

18. The SPT understands that the new Constitution of the Republic of Maldives, which existed in draft form at the time of the visit of the SPT, has now been adopted. The new Constitution contains a revised Chapter II on fundamental rights and freedoms, including prohibition of arbitrary detention and cruel, inhuman or degrading treatment or punishment or torture, as well as a provision on humane treatment of arrested or detained persons. **The SPT welcomes the ratification of the new Constitution by the President on 7th August 2008.**

19. The Constitution is the supreme law of Maldives; articles 31 and 148 of the Constitution in force at the time when the visit took place provided that where any law, regulation or any principle having the force of law is inconsistent with the fundamental rights or other provisions stipulated in the Constitution, such law, regulation or principle shall, to the extent of such inconsistency, be void.

20. Chapter II of the Constitution contained provisions on the fundamental rights and duties of citizens. Under article 31, the fundamental rights stipulated in the Constitution shall not temporarily or otherwise be denied save in accordance with the Constitution. The Constitution was, however, less clear regarding the interrelationship between national and international law and provided little guidance as to whether human rights treaties duly ratified by the Maldives can be considered directly applicable in the legal order of the Maldives.

21. In this respect the SPT wishes to recall that, in accordance with articles 26 and 27 of the Vienna Convention on the Law of Treaties of 23 May 1969 to which the Republic of Maldives acceded on 14 September 2005, every treaty in force is binding upon the parties to it and must be performed by them in good faith. As to the relationship between national and international law and observance of treaties, the Vienna Convention clearly stipulates that a State party may not invoke the provisions of its internal law as justification for its failure to comply with or observe the provisions of a treaty.

22. **The SPT recommends that the Maldives, in order to ensure the best possible protection against ill-treatment, continue to review and strengthen its efforts to ensure that all domestic laws as well as administrative regulations conform to the provisions and principles of the international human rights instruments and standards. When incorporating international legal obligations, authorities should have regard to the language of the international legal instruments.**

2. The offence of torture and other forms of cruel, inhuman or degrading treatment or punishment in the Maldivian legislation

23. The SPT notes that the Government of the Maldives is presently embarked on an ambitious programme of legal reform, which would include a new Penal Code, Sentencing Bill, Criminal Procedure Code, Bill of Evidence, Police Bill, National Security Bill, Detention Procedures Bill and Parole Bill. **The SPT requests to be kept informed on the process of adoption of these new Bills and their entry into force. It also requests a copy of the adopted versions of the above-mentioned Bills.**

24. Although the new Constitution referred to above now contains a general prohibition of torture and ill-treatment, the current penal legislation of the Maldives does not incorporate a definition of torture nor define acts of torture as criminal offences. The SPT is concerned about the fact that this situation may justify tolerance of acts prohibited under the Constitution and the international obligations of the Maldives, and may create actual or potential loopholes for impunity.

25. In line with the general comment No. 2 of the Committee against Torture,¹² **the SPT recommends that the Maldives make the offence of torture punishable as an offence under its criminal law as well as provide for appropriate redress for the victims of torture and/or ill-treatment. The wording of such a provision should contain, at a minimum, the elements of torture as defined in article 1 of the Convention against Torture, and the requirements set out in article 4. Furthermore, in SPT's view, the conditions that give rise to ill-treatment frequently facilitate torture; therefore the measures required to prevent torture must be applied also to prevent ill-treatment.**

3. Corporal punishment

26. In the initial talks with the Minister for Justice, Attorney General and the Minister for Home Affairs the delegation was informed that flogging remains an applicable sentence for certain offences. The authorities noted, however, that this punishment was intended to inflict humiliation rather than physical pain. The delegation understood that even children may be subject to flogging; for the offences for which flogging is prescribed, they must assume criminal responsibility once they reach puberty.

27. Deliberate infliction of pain as a form of control or punishment is both inhuman and degrading. The SPT shares the views expressed by the Human Rights Committee (HRC) in its general comment No. 20 on prohibition of torture and cruel treatment or punishment, according to which the prohibition of torture enshrined in article 7 International Covenant on Civil and Political Rights (ICCPR)¹³ should be extended to corporal punishment.¹⁴ The Special Rapporteur

¹² CAT/C/GC/2, 24 January 2008, para. 8.

¹³ To which the Republic of the Maldives acceded on 19 September 2006.

¹⁴ General comment No. 20 of the Human Rights Committee on prohibition of torture and cruel treatment or punishment (10 March 1992), para. 5.

on Torture also has taken the view that corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment enshrined in the international human rights instruments.¹⁵ As regards the practice of flogging, the SPT emphasizes that the HRC has considered flogging as cruel and inhuman punishment prohibited by article 7 of ICCPR, and the Committee against Torture has taken the view that flogging is not in conformity with the Convention against Torture.¹⁶

28. Furthermore, the SPT is concerned about the fact that section 44 of the draft Penal Code would legalize corporal punishment of children at schools and institutions. The SPT shares the opinion of the Committee on the Rights of the Child which, in its latest concluding observations on the Maldives, considered that the practice of flogging was contrary to article 37 (a) of the Convention on the Rights of the Child.¹⁷ The SPT considers that the practice of flogging, whether inflicted upon a child or an adult and irrespective of whether it is intended to inflict humiliation or physical pain, is unacceptable because of its inherent humiliating and degrading nature. It should therefore not be an applicable sentence for any offences.

29. The SPT recommends that the Government of Maldives prohibit all types of corporal punishment, including flogging irrespective of whether inflicted with the purpose to cause pain or humiliation, as a sentence for crime and for disciplinary purposes.

4. Administration of juvenile justice and safeguards for children in conflict with the law

30. The main legal framework for the administration of Juvenile Justice includes the following legislation: the Penal Code; the Law on the Protection of the Rights of the Children (Law No. 9/91); Rules on Interrogation Adjudication and Sentencing relating to juveniles (amended in 2004); the Family Act (Law No. 4/2000); and the Regulation on Conducting Trials, Investigations and Sentencing fairly for Offences Committed by Minors. The SPT understands that the Government is in the process of reforming the administration of juvenile justice, including plans to draft a Juvenile Justice Act.

31. There is only one Juvenile Court, in Malé, and for that reason children need to come to the capital for a number of specified cases. However, some cases involving children in conflict with the law can be dealt with by the Island Courts.

32. The SPT recalls, that in line with article 37 (b) of the Convention on the Rights of the Child, all deprivation of liberty of a child, including arrest, detention and imprisonment, should

¹⁵ Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37 B E/CN.4/1997/7, 10 January 1997, para. 6.

¹⁶ See, for example, CCPR/CO/84/YEM, 9 August 2005, para. 16; CCPR/CO/70/TTO, 10 November 2000, para. 13; CAT/C/IDN/CO/2, 2 July 2008, para. 15; and CAT/C/CR/28/5, 12 June 2002, para. 4.

¹⁷ CRC/C/MDV/CO/3, 13 July 2007, para. 55.

be used only as a measure of last resort and for the shortest appropriate period of time, so that the child's right to development is fully respected and ensured. Specific safeguards for children deprived of their liberty and the possibility to avail themselves of those safeguards are discussed in more detail in the chapter V sections A and C below.

33. **The SPT recommends that the authorities of the Maldives ensure that, in all decisions taken within the context of the administration of juvenile justice and in all plans to review the relevant legislation, the best interests of the child are given primary consideration. This includes the first contact with the police, the possible stay in police custody and in pretrial detention and the stay in a prison or other facility for children that they are not free to leave at will.**¹⁸

B. Institutional Framework - systems for complaints, monitoring and legal aid assistance

34. The delegation met with the representatives of the Human Rights Commission of the Maldives, the Jail Oversight Committee, the Public Complaints Bureau, the Attorney General, and the Police Integrity Commission. The SPT was informed about the mandate and the legal framework of the above-mentioned bodies and discussed the prevailing practices and possible challenges the representatives of the above bodies had identified in their respective fields of work.

1. Human Rights Commission of the Maldives

35. The Human Rights Commission of the Maldives (HRCM) was established through a Decree of the President of the Republic of Maldives on 10 December 2003. The new Human Rights Commission Act of August 2005, as amended in August 2006, provides that the Commission shall be an independent legal entity having the power to litigate in its own name and the capacity to conduct transactions in its own name. However, it remained unclear to the delegation whether or not this Act has entered into force. **The SPT requests the authorities to clarify whether the Human Rights Commission Act has entered into force, and if not, to provide information on the planned time-table for its entry into force.**

36. The Government of the Maldives notified the designation of the Human Rights Commission of the Maldives as the National Preventive Mechanism (NPM) in a statement issued on Human Rights Day on 10 December 2007, by the President of the Republic of Maldives.

37. The Commission consists of seven members appointed by the President in accordance with the council of the People's Majlis. The members hold office for a period of five years, which is extendable for another term of five years. At the time of the visit, the Commission was assisted by 13 staff members. The Commission submits an annual report to the President of the Republic and to the People's Majlis.

¹⁸ See also general comment No. 10 (2007) of the Committee on the Rights of the Child on Children's rights in juvenile justice, CRC/C/GC/10, 25 April 2007.

38. The mandate of the Commission is enshrined in section 19 of the Act, under which the work of the Commission covers the following three major areas: investigation of allegations of human rights violations; creation of human rights awareness among the people; and advising relevant agencies of the government in relation to redress of grievances of human rights violations and awareness generation.
39. Under section 20 of the Act, to fulfil its mandate enshrined in section 19, the Commission inquires into complaints of human rights violations; advises the government on ratification of international human rights treaties and on formulation of laws; identifies inadequacies in existing laws in relation to human rights; and undertakes research in human rights. Furthermore, the commission is mandated to visit places where persons are incarcerated or detained under a judicial pronouncement or lawful order; monitor and inquire into their welfare and make recommendations to relevant government agencies as to their treatment.
40. In a meeting with the HRCM, the delegation was informed that the Commission receives approximately 300 complaints annually and that it had recently carried out a visit to Maafushi prison. The members of the Commission noted that they have not encountered any problems in accessing places of deprivation of liberty and indicated that they had not heard of any reprisals against detainees after their visits. However, it was emphasized that the HRCM sees awareness-raising as its main activity. Furthermore, the delegation was informed that the investigative capacity of the Commission is limited to one complaints officer and three trainees.
41. The exact scope of the visiting mandate of the HRCM remained unclear to the delegation. As noted above, the relevant section of the above-mentioned Act limits the visiting mandate to places where persons are detained *under a judicial pronouncement or lawful order*. This seems to exclude the possibility to visit, for example, police stations, institutions for persons in need, psychiatric institutions and military establishments. Furthermore, in the meeting with the HRCM, the delegation was informed that the Committee does not visit psychiatric or military establishments. Thus its mandate seems not to allow the Committee to visit all places where person are or may be deprived of their liberty as enshrined in article 4 of OPCAT.
42. However, in the meeting with the HRCM, the delegation was informed that it had recently visited one establishment operating under the Ministry of Education and Social Security. Furthermore, according to the Annual Report 2005 of the HRCM, it had visited the Education and Training Centre for Children and three police facilities. **The SPT request the authorities to provide information on the exact scope of the visiting mandate of the HRCM and specify whether it covers also police holding facilities. The SPT also requests information on the number of visits carried out in the course of the year 2008 and planned for the year 2009, the establishments visited, and possible proposals made by the Commission to amend existing laws or regulations regarding safeguards against ill-treatment.**
43. The current mandate of the HRCM is discussed greater in detail in Chapter II in light of the requirements set out for the NPM in OPCAT.

2. Jail Oversight Committee

44. The Jail Oversight Committee was established in April 2004. Members of the Committee are appointed by the President and include lawyers, judges and parliamentarians. It is functionally independent of the Ministry of Home Affairs and the Police, and reports directly to the President and to the Ministry of Home Affairs.

45. The Committee was at first entrusted with the inspection of the Maafushi prison only, but its mandate has recently been extended to cover the Dhoonidhoo detention centre. The Committee has the power to inspect these establishments without prior notice to the Department of Penitentiaries and Rehabilitation Services (DPRS).

46. According to information received by the delegation, this body is not functioning at the moment. Furthermore, from discussions with the prison administration and interviews with the detainees, the delegation learned that both authorities and detainees were critical about the need to have such a body.

47. **The SPT invites the authorities to review the mandate and the terms of reference of the Jail Oversight Committee with a view of establishing it as an independent complaints and monitoring body for prisons.**

3. Public Complaints Bureau

48. The Public Complaints Bureau was established in June 2004 and was initially given a mandate to investigate cases of torture. The Bureau's investigative activity ended in May 2006. Concluded cases were submitted to the President and the 35 unfinished cases were passed to the Police Integrity Commission. When carrying out its original mandate, it had investigated 69 cases, out of which 57 included allegations of torture and/or ill-treatment, mainly of violence and beating at the time of investigation in order to force confessions, and also complaints about deprivation of sleep. According to the information given by the representatives of the Bureau, in none of the cases examined by the Bureau was torture proven. **The SPT requests information on the manner in which the assessment of the veracity of the allegations was made, as well as copies of the records of the medical examinations carried out to assess the allegations, in the above-mentioned 57 cases involving allegations of torture or ill-treatment.**

4. Police Integrity Commission

49. The investigation of complaints against the Police will be vested in the not yet functioning Police Integrity Commission established in August 2006. The draft Police Act now before the Parliament provides that the Commission will be mandated to investigate complaints brought against police officers; to identify, ascertain and investigate the offences committed by police officers; to minimize corruption, excessive use of force and the commission of other offences by the police; and to review any disciplinary or administrative action brought against police officers. It will report directly to the Ministry of Home Affairs.

50. The SPT has serious concerns about the potential conflict of interest in the Police Integrity Commission's draft mandate. The SPT emphasizes that, if the Police Integrity Commission is to enjoy public confidence, it must both be, and be seen to be, independent and impartial. **The SPT requests details of the legislative and operational provisions to ensure the independence of the Police Integrity Commission, and information on its investigative capacity as well as the staff and financial resources made available to it. The SPT also requests to be informed about when the Commission has started to work. Furthermore, the SPT requests to be informed of the outcome of the examination of the 35 unfinished cases transferred from the Public Complaints Bureau to the Commission.**

5. Prosecutorial oversight

51. Article 220 of the new Constitution provides for establishment of the post of Prosecutor General of the Maldives. The Prosecutor General is functionally independent, but subject to the general policy directives of the Attorney General.

52. The Prosecutor General is also vested with the power to monitor and review the circumstances and conditions under which any person is arrested, detained or otherwise deprived of freedom prior to trial. Furthermore, he has the power to order any investigation that he deems desirable into complaints of criminal activity or into any other criminal activity of which he becomes aware. **The SPT welcomes this new provision and requests information on any plans to carry out the monitoring work in practice.**

6. Judicial oversight

53. Under article 115 of the Constitution in force at the time of the visit, the High Court of the Maldives had jurisdiction to hear all appeals from the Courts of the Maldives and hear other cases as determined by the President of the Republic. The old Constitution did not provide separation of the judiciary from the executive.

54. The new Constitution of the Maldives provides for independence of the judiciary. Under article 141, judicial power is vested in the Supreme Court, the High Court, and such trial courts as are established by law. It establishes the Supreme Court as the highest authority for the administration of justice in the Maldives and the Chief Justice as the highest authority on the Supreme Court.

55. Article 45 of the new Constitution prohibits arbitrary detention and arrest. The constitution further provides in article 58 that anyone whose constitutional rights or freedoms have been infringed or denied may apply to a court for remedy.

56. With respect to the role of the judiciary as guarantor of human rights of detainees, the delegation noted in its discussions with the authorities, police staff and detainees that, at the time of the visit, there was neither prosecutorial nor judicial oversight of the initial police custody of detainees. Under the Regulation Governing the Application to a Judge for the Arrest or Detention of Persons Suspected of Committing an Offence for a further Period than Approved by the Committee (14 October 2003), the role of the judiciary started only after 22 days of custody.

57. The SPT notes that the new Constitution contains a provision both on judicial and prosecutorial oversight of custody. Article 48 (d) provides that a person arrested or detained should be brought within twenty four hours before a Judge, who has power to determine the validity of the detention, to release the person with or without conditions, or to order the continued detention of the accused. **The SPT welcomes this new provision.**¹⁹

7. Provision for access to a lawyer and legal aid

58. Article 16 (2) of the Constitution in force at the time of the visit provided, that every person charged with an offence shall have the right to defend himself in accordance with the Sharija. To this effect such a person shall be allowed to obtain the assistance of a lawyer whenever such assistance is required.

59. Section 2 (a) of the 2004 Regulations on Seeking and obtaining Assistance of a Lawyer provides that, in any case being investigated on suspicion of an offence, the person being investigated shall be given the opportunity to seek the assistance of a lawyer. Section 2 (b) provides that a person suspected of having committed an offence shall be informed, at the time of his arrest, of this right. However, section 11 clearly stipulates that it shall be the responsibility of the accused to select the lawyer sought, pursuant to the accused requiring the assistance of a lawyer, and to pay the said lawyer.

60. At the time of the visit, there was no system of free legal aid assistance in place in Maldives. As a consequence, the delegation found that the vast majority of the detainees interviewed by the delegation could not benefit from legal advice due to lack of sufficient financial resources. However, in the meeting with the Attorney-General, the delegation was informed that the authorities plan to introduce a system of legal aid assistance and possibilities to benefit from the assistance of a private lawyer will be enhanced.

61. By a note verbale of 22 June 2008 the authorities informed the SPT that the Government notes the absence of a legal aid scheme in the Maldives at present, and that steps have already been taken to establish a system of legal aid. The SPT also notes that article 53 of the new Constitution, in addition to laying down the right of everyone to retain and instruct legal counsel at any instance where legal assistance is required, provides that “in serious criminal cases, the State shall provide a lawyer for an accused person who cannot afford to engage one”. **The SPT welcomes the new constitutional provision on legal aid assistance. The SPT requests information on any possible legislative changes this new constitutional provision will bring, the definition of a “serious offence”, and the time a person may be held in custody before being formally accused of an offence. In addition, the SPT requests information on the plans and time frame to establish this system, including necessary structures, to ensure its effective functioning also in practice, and a copy of any new legislation once adopted.**

62. From a preventive point of view, access to a lawyer is an important safeguard against ill-treatment which is a broader concept than providing legal assistance solely for conducting one’s defence. The presence of a lawyer during police questioning may not only deter the police

¹⁹ See also below Chapter III, section A 1 on initial police custody period.

from resorting to ill-treatment or other abuses, but may also work as a protection for police officers in case they face unfounded allegations of ill-treatment. In addition, the lawyer is the key person in assisting the person deprived of liberty in exercising his or her rights, including access to complaints mechanisms. **The SPT recommends extension of the system to cover all persons deprived of liberty who cannot, due to financial or other reasons, benefit from the assistance of a private lawyer, and that from as early a stage of the deprivation of liberty as possible, preferably from the outset.**

8. Conclusions

63. The SPT is of the view that oversight of all places of deprivation of liberty exercised by independent bodies, judicial and prosecutorial oversight of custody, the possibility to lodge a complaint to an independent body charged with examining allegations of ill-treatment, coupled with access to a lawyer *de jure* and *de facto* are key safeguards against torture and ill-treatment. The SPT would also like to underline the duty of all complaints mechanisms to ensure that allegations of torture and/or ill-treatment are thoroughly investigated and perpetrators brought to justice.

64. However, the mere theoretical existence of these safeguards is not enough; to guarantee protection against ill-treatment it is necessary that they fulfil their function also in practice. To this end, the SPT emphasizes that the complaints and oversight mechanisms, the judiciary and the prosecutors should not only be independent, but must be seen to be independent, and that necessary staff and financial resources should be made available to them to carry out their functions.

II. DEVELOPMENT OF THE NATIONAL PREVENTIVE MECHANISM

65. As already noted, the Maldivian authorities had notified the designation of the National Human Rights Commission of the Maldives (HRCM) as the National Preventive Mechanism (NPM) on 10 December 2007.

66. Under the terms of the OPCAT, the SPT is empowered to cooperate with States parties in the implementation of the Protocol, advising and assisting them in the launching of NPMs, without which the new system would be neither effective nor efficient for purposes of achievement of the objective of preventing torture and other cruel, inhuman or degrading treatment or punishment.²⁰

A. Meeting with the National Preventive Mechanism

67. In the meeting with the Human Rights Commission, preliminary discussions took place about the scope of the mandate of this mechanism as related to the international mandate required in accordance with OPCAT, and the importance of its creation and functioning being in compliance with the international standards as outlined in the Protocol. The discussion concerned the need to give due consideration to the principles relating to the status of national

²⁰ OPCAT, art. 2, para. 4, and art. 11, para. (b), sect. (i).

institutions for the promotion and protection of human rights, so called Paris principles,²¹ in particular to the requirement to establish the mandate in a constitutional or legislative text specifying the NPM's composition and spheres of competence, as enshrined in principle 2.

68. During this exchange of ideas the main challenges for this new national preventive mechanism in its daily work within the country and its relationship with the SPT were discussed and analysed. Among the main issues raised were the following:

- The importance of this national mechanism being established in law. In this regard, the SPT recognizes that a presidential decree is an important step, but it is not sufficient to guarantee the permanent character and the sustainability that the national mechanism should have. Therefore, the SPT urges the Republic of the Maldives to continue the implementation of this process until a law is adopted that meets this requirement.
- If the National Human Rights Commission is to maintain the character of a national preventive mechanism, the State of the Maldives must provide it with sufficient human and material resources to meet its objectives. This should not happen as an additional charge to its existing activities: the preventive entity should have its own agenda, separated from the activities the HRCM usually carries out as part of its general mandate. In this regard, it must include an autonomous programme of visits to all places of detention and custody of persons (prisons, police stations, psychiatric hospitals, centres for minors, immigrant detention centres, etc.).
- With regard to unannounced visits to places of detention by the National Human Rights Commission in its capacity as a national mechanism for the prevention of torture, apart from the mandate that this Commission already has in conformity with its statute of creation, this requires a mandate to fulfil the international obligations under the OPCAT, as assumed by the State party through the process of ratification of this treaty. As such, the national preventive mechanism, in order to perform the complementary work to that of the SPT and in accordance with the requirement for access set out in the OPCAT, must have free access to all types of places where persons are or may be deprived of their liberty, including among others, police stations, places for administrative detention, prisons, psychiatric institutions and institutions for persons in need, military detention facilities, facilities for children in conflict with the law and in need and means of transport of detained persons.

69. As a result of the discussions with the Commission representatives, the SPT is concerned that the HRCM may not have appropriately qualified people to undertake the variety of jobs related to the NPM work and that the HRCM might face the problem of inadequate financial resources. Current budgeting procedures were such that they might not guarantee the required financial autonomy; the SPT was informed that the practice of processing the Commission's budget proposals was being developed. **The SPT requests information on the budgetary and**

²¹ A/RES/48/134, 20 December 1993.

human resources made available to the HRCM to effectively carry out its functions as NPM, including a breakdown of the budgetary resources allocated for it to carry out the work as NPM.

70. In light of this first meeting with the national preventive mechanism, the SPT appreciates that the State of the Maldives has initiated the process of establishing the national preventive mechanism and calls upon the State to continue with the process of consolidating and institutionalizing it. For these purposes, it reaffirms the following guidelines addressed to the State in order to guarantee the optimum development of this mechanism, as well as directed at the national mechanism so that a comprehensive and complementary plan may be put in place allowing the NPM to accomplish its functions for the prevention of torture.

B. Guidelines

1. Guidelines regarding the State party

71. The SPT wishes to indicate some guidelines for the State party concerning certain key issues of NPMs. The State should:

(a) Guarantee the functional and perceived independence of the national preventive mechanism, as well as the independence of its staff and any experts it may use as consultants in order to prevent any real or perceived conflict of interest;

(b) Adopt all necessary measures in order to guarantee that the experts of the national preventive mechanism have all the professional competencies that are required, including gender balance and the adequate representation of ethnic and minority groups of the country;

(c) Provide the necessary resources for the functioning of the national preventive mechanism;

(d) Provide the means to allow the national preventive mechanism to comply in a sustainable way with the principles related to the status of the national institutions for the promotion and protection of human rights (so called Paris Principles);²²

(e) Provide the NPM with access to all information regarding the number of persons who are deprived of liberty in places of detention, as well as on the number of places of detention and their location;

(f) Provide the NPM with access to all information regarding the treatment of these people and their conditions of detention, including access to all types of files;

(g) Provide the NPM with the possibility of interviewing persons deprived of liberty, in private, with the assistance of an interpreter if necessary, as well as interviewing any other person whom the national preventive mechanism believes capable of providing relevant information;

²² A/RES/48/134, 20 December 1993.

- (h) Not sanction nor carry out acts that could be detrimental for people or organizations who provide information to the national mechanism;
- (i) Examine the recommendations made by the NPM and establish a dialogue with this mechanism regarding possible measures of implementation;
- (j) Publish and disseminate annual reports issued by the national preventive mechanism.

2. Guidelines regarding the National Preventive Mechanism

72. The SPT wishes to indicate some guidelines for the NPM itself concerning certain key issues. The NPM should:

- (a) Safeguard and maintain its functional independence, as well as the functional independence of its staff. Establish modalities so that other non-governmental actors working with and promoting the prevention of torture may have ways to cooperate with the mechanism or participate in it;
- (b) Assure and maintain the recruitment of personnel with the professional competence required, taking into account gender balance and an adequate representation of ethnic and minority groups of the country;
- (c) Monitor and evaluate its own functioning in terms of international standards established by the principles relating to the status and functioning of the national institutions for the protection and promotion of human rights (Paris Principles);
- (d) Plan use of resources and ways to guarantee periodic visits to check the treatment of persons deprived of their liberty in all types of places of detention and take appropriate measures for their protection;
- (e) Make recommendations to competent authorities with the objective of improving the treatment and conditions of persons deprived of liberty and preventing torture and other cruel, inhuman or degrading treatment, taking into account the relevant norms of the United Nations, as well as the recommendations made on visits and in reports by the SPT;
- (f) Define a strategy and make proposals and observations regarding legislation in force or in draft, including the establishment in law of the national preventive mechanism;
- (g) Insist upon its access to all information on the number of persons deprived of liberty in places of detention;
- (h) Maintain contact with the SPT, as well as facilitating sharing of all types of information in order to follow up compliance with recommendations made by the SPT;
- (i) Ensure confidentiality of the information gathered and maintain it under confidentiality as appropriate;
- (j) Publish and disseminate annual reports;

(k) Ensure training and updating of its specialized staff in procedures and good practice in order to apply a rigorous and consistent methodology in carrying out visits to places of detention, including methods of interviewing and gathering and systematic collection and analysis of the information and data relating to the prevention of torture.

III. SITUATION OF PERSONS DEPRIVED OF THEIR LIBERTY

A. In police facilities

1. Initial police custody period

73. Article 15 1 (b) of the Constitution in force at the time of the visit provided that “No person shall be arrested or detained except as provided by law. No person shall be detained for a period exceeding twenty-four hours without being informed of the grounds of arrest or detention.” The new Constitution contains a similar provision.

74. According to the legislation in force at the time of the visit, a suspect could be held in detention for seven days by a decision of the police. Thereafter, under the Regulation Governing the Arrest or Detention of Persons Suspected of Committing an Offence for a Period of More than Seven Days, a three-member committee composed of government officials appointed by the President could approve a 15-day extension.²³

75. As noted in the Chapter I section B 6 above, the SPT understands that the new Constitution brought some changes to the above-described situation. The article 48 (d) of the new Constitution provides that a person arrested or detained shall be brought within twenty four hours before a Judge, who has power to determine the validity of the detention, to release the person with or without conditions, or to order the continued detention of the accused. **The SPT recommends that the relevant authorities ensure the due application of this new procedure laid down in article 48 (d) of the Constitution.**

76. **The SPT requests the authorities to provide a detailed description of the decision-making procedure regarding placement of a person in police detention, continuation of the detention, and remand custody, reflecting the changes brought about by the introduction of the new procedure laid down in article 48 (d) of the Constitution. This description should include, in particular, information on the authorities deciding on custody and its continuation, time limits for these decisions and references to relevant laws and/or regulations.**

77. The SPT is concerned about the fact that persons may not only be deprived of their liberty by the sole decision of the police for a period of seven days, but that they are also held in facilities which are under the responsibility of the police. For the prevention of ill-treatment police investigations and custody should be separated both institutionally as functionally. The

²³ As the SPT was not provided with this regulation, the information in this paragraph is taken from the report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, A/HRC/4/25/Add.2, 2 May 2007, para. 46.

exercise by the police of both investigative and custodial functions may lead to the increased risk that police investigators try to exert strong influence over the persons held in custody or even to resort to ill-treatment for investigative purposes.

78. **The SPT recommends that the initial police custody period be of shortest possible duration and that thereafter remand custody should occur in facilities under the responsibility of the Department of Penitentiary and Rehabilitation Services (DPRS) and not the police. The SPT also recommends that the relevant authorities ensure that no pressure is exerted over the persons held in detention for investigative or any other purposes.**

79. In a note verbale of 22 June 2008 the authorities gave assurances that the Government of Maldives is already working to strengthen the separation of the custodial and investigation functions of the police. Further, it was noted that the recommendation that the custody of remand prisoners become the responsibility of DPRS is being considered seriously. **The SPT requests the Government to provide information on any new developments in this respect.**

2. Pretrial custody and the bail process

80. Under section 5 of the Bail Regulations 2004, the person arrested can submit a request to be released on bail. A person in the investigative stage shall submit the request to the authority that arrested him and a person in the judicial stage shall submit the request to the court undertaking the matter or to the Judicial Committee, if it falls on a day when the Committee has its sessions. The offences for which bail is allowed are laid down in Schedule 1 of the Regulation.

81. Under sections 6 and 7 (a) of the afore mentioned regulations, a person arrested on suspicion of a crime shall have the conditions of his bail decided and communicated to him in writing within 36 hours of his arrest. If it has been decided that the application for bail is denied, then the person whose application has been denied shall be informed of the reasons for the decision in writing within 36 hours.

82. Under the legislation in force at the time of the visit, this seemed to mean that during the first seven days in police custody, the decision on bail was taken by the police. After this initial police custody period, the decision on bail was taken by the same Committee that decided on the extension of the detention. **The SPT recommends that the Maldivian authorities review the system of release on bail so the authority that is responsible for investigating the crime does not also decide upon bail. The SPT requests information on whether the new procedure laid down in article 48 (d) of the new Constitution will bring any changes to the procedure regarding pretrial remand in custody and bail and, if so, asks to receive information on those changes.**

83. During the visit, the delegation gained the impression that practical difficulties relating to bail contributed to the number of persons remanded in custody. Although bail might be granted, there could still be financial obstacles to achieving bail in practice, as the surety demanded for release might be very high and most of the time not affordable for ordinary Maldivians. **In order to make the release on bail a real possibility in practice, the SPT recommends that the**

amount of the surety should be in line with the financial means of the detainee concerned. The SPT requests information on number of requests be released on bail submitted in 2007 and first half of 2008, and the number of persons granted bail.

3. Production before a court as a safeguard against ill-treatment

84. Under the Regulation Governing the Application to a Judge for the Arrest or Detention of Persons Suspected of Committing an Offence for a further Period than Approved by the Committee (14 October 2003), the role of the judiciary starts only after the first seven days of custody decided by the police and the 15 days extension granted by the Committee. Consequently, persons may be held in police custody for a period of 22 days without having their detention approved or reviewed by a judicial body.

85. The above-mentioned Regulation does not indicate the maximum period that the judges are allowed to extend the custody pending investigations, but provides under its section 6, that the judge shall, in writing, state the period of arrest or detention. In addition, it does not require the court to provide the grounds for the extension of the detention in writing, but only the grounds for a decision *denying* the extension.

86. Furthermore, no reference to the duty of the court to hear the detainee him/herself in person is made in the Regulation; under section 4, only an officer from the investigative authority shall be answerable to any queries or questions posed by the judge. Also the Special Rapporteur on the independence of judges and lawyers stated in his report on Maldives that the judge examines the request for extension without hearing the detainee or his lawyer.²⁴ This was also confirmed by the detainees interviewed by the delegation, who alleged that they were detained by the police for weeks, even months, without being brought to the court.

87. As noted earlier, the SPT is aware of the new constitutional provision according to which a detainee shall now be brought before a judge within 24 hours to determine the validity of the detention, to release the person with or without conditions, or to order the continued detention of the accused. **The SPT requests information on whether the Regulation Governing the Application to a Judge for the Arrest or Detention of Persons Suspected of Committing an Offence for a Further Period than Approved by the Committee will be amended or repealed due to entry into force of the new Constitution. In the absence of a maximum time limit for detention, the SPT recommends that the decision to continue the detention should be reviewed by the court at regular intervals.**

88. Judicial oversight of a decision to extend the custody period, that is appearance of a person deprived of liberty before a court and the possibility to challenge the detention decision and to report any ill-treatment, is an important safeguard of the rights of the detainee in general and against ill-treatment in particular. The SPT underlines that no one should be held in detention without being given an effective opportunity to be heard promptly by a judicial or other

²⁴ Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, A/HRC/4/25/Add.2, 2 May 2007, para. 46.

authority.²⁵ **The SPT recommends that detainees should not only be present in the court hearing regarding detention and its continuation, but that the court should afford them an opportunity to speak and to report any ill-treatment. It should always be open to the court to make a referral for medical examination if there are reasons to believe that ill-treatment may have occurred, and to take steps to ensure that any allegations of ill-treatment are promptly investigated by a competent body.**

4. Risk entailed in reliance on confession for conviction

89. Under the law in force, it is possible for a court to determine conviction on the sole basis of a confession. From discussions with the authorities, the delegation gained the impression that police investigations also tended to focus on obtaining confessions and that the prosecutorial and judicial process also centred on confession. However, the delegation was informed that confession alone is usually not regarded as a sole ground for conviction any more, and that most convictions and sentences (almost 90%) have been decided upon the basis on some evidence other than solely a confession.

90. However, several detainees interviewed by the delegation alleged that the police still resorted to obtaining statements through coercion and ill-treatment. For example, some detainees interviewed by the delegation stated that they were beaten by members of a special investigation unit during the investigation to make them to confess their involvement in the explosion in Himandhoo. In another interview, a detainee alleged that his hands were tied behind his back while he was beaten all over in the interrogation room of the Malé Custodial outside of a formal interrogation session. Furthermore, in Dhoonidhoo Police Detention Centre, the delegation interviewed a detainee who had allegedly been obliged to spend a week sleeping outside, without a mattress, on a concrete plinth next to noisy pump machinery. This inappropriate sleeping arrangement had allegedly been arranged by custodial staff at the behest of the police investigator in charge of the case.

91. The SPT considers that the possibility of criminal conviction solely on confession may open the way for certain individuals to abuse the process by trying to extract confessions by ill-treating persons deprived of their liberty. In this respect the SPT would like to highlight the prohibition against taking undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person and the principle that no detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.²⁶ The SPT considers an evidence-led and not confession-led approach to criminal investigation to be one of the fundamental safeguards, as it would render having recourse to extracting confessions by means of ill-treatment meaningless and thus reduce considerably the risk of ill-treatment of persons in police custody.

²⁵ As enshrined in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173 (9 December 1988), Principle 11.

²⁶ As enshrined in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173 (9 December 1988), Principle 21.

92. The SPT welcomes the inclusion, in the new Constitution, of article 52 providing that “no confession shall be admissible in evidence unless made in court by an accused who is in a sound state of mind. No statement or evidence must be obtained from any source by compulsion or by unlawful means and such statement or evidence is inadmissible in evidence”. The SPT also welcomes rule 2.4 of the Draft Rules of Criminal Procedure²⁷ according to which “when questioning a person under any circumstances, a law enforcement officer must not use torture or intimidation to persuade the person to answer questions or make a confession”.

93. The SPT recommends that the relevant authorities take the necessary steps to ensure the scrupulous application of the new constitutional provision enshrined in article 52. The SPT requests information on the status of the Rules of Criminal Procedure and whether they include the prohibition of the use of torture or ill-treatment in police investigations. The SPT also recommends that police training in investigative methods emphasise the need to proceed from the evidence to the suspect rather than the reverse. The SPT also recommends that before persons deprived of liberty sign a statement to the police, they should be given a copy of the statement and have it read out or have the opportunity to read it.

5. Information on rights as a safeguard against ill-treatment

94. Both the Constitution in force at the time of the visit and other relevant acts remained silent as to information on the rights of the detainee and did not specify what exactly those rights include.

95. During the visits to police stations the delegation saw no written information on rights, and almost all of the detainees interviewed by the delegation reported that they had not been given any information on their rights. Furthermore, on the basis of the interviews with the detainees and from the discussions with the police officers, the delegation gained the impression that, in cases where some information on rights was provided, it was not done in either a consistent or a systematic manner in all police stations. Informing detainees about their rights seemed thus to be left to the discretion of the police officers on duty.

96. It is axiomatic that if people are unaware of their rights, their ability to effectively exercise those rights is adversely affected. The right of persons deprived of liberty to be notified of their rights is a crucial element in the prevention of ill-treatment as well as a prerequisite for effective exercise of due process rights. The SPT welcomes the fact that article 48 of the new Constitution lay down some basic rights of the detainees.²⁸

97. The SPT recommends that the relevant legislation be amended to reflect the new Constitution and to spell out, in detail, all the rights of persons deprived of liberty, as well as the right of such persons to be notified of their rights as from the moment of deprivation

²⁷ Draft of 21 April 2005.

²⁸ Right to be informed on the reasons of arrest or detention; access to lawyer and being informed on this right; right to remain silent; right to be brought to court within 24 hours.

of liberty and the concomitant obligation of law enforcement officers to ensure such notification and to assist in the exercise of all such rights as from the very outset of deprivation of liberty.

98. **The SPT also recommends that a standard notice listing all the rights of persons deprived of liberty should be produced in the languages spoken by detained persons and posted in places of deprivation of liberty where they can be read easily by persons in custody. In addition, the same information should be contained in the form to be signed by each person in custody, and the detainee should be given a copy of that form.**

6. Notification of deprivation of liberty as a safeguard against ill-treatment

99. By a note verbale of 22 June 2008 the authorities informed the SPT that under the Regulation on Seeking and Obtaining the Assistance of a Lawyer the investigating officer must inform a family member or relative whom the detainee wishes to inform within 24 hours of arrest and gave their assurances that every effort was made to inform a family member about the arrest within 24 hours.

100. However, in spite of this, several detainees interviewed by the delegation complained about not being able to contact their family members or have them otherwise notified of the custody. The delegation found that, in practice, detainees could not exercise this right unless the police officer investigating their case agreed to it. For example, in Dhoonidhoo Detention Centre a detainee alleged that he was held in the detention 51 days without his family being informed of his custody. Furthermore, even if an investigating officer agreed to notify the family, it seemed that the detainees remained unaware whether their families had actually been notified.

101. A person held without anyone knowing his whereabouts is more vulnerable to abuse. The right to notify someone on the outside about the fact of one's deprivation of liberty is an important safeguard against ill-treatment; those who might otherwise resort to ill-treatment may be deterred by the knowledge that someone outside has been notified and may be vigilant about the detained person's well-being.

102. **The SPT recommends that the relevant authorities ensure that the right to notify a family member or other relevant person of the deprivation of liberty within 24 hours is effectively implemented also in practice. The SPT further recommends that detainees should be systematically informed about this right and asked to sign a standard form on rights, indicating the person they wish to notify. Police personnel should be instructed to inform detainees of this right and to implement the right by notifying the person indicated.**

7. Access to a lawyer as a safeguard against ill-treatment

103. As noted in the chapter I section B 7 above, section 2 (a) of the 2004 Regulations on Seeking and Obtaining Assistance of a Lawyer provides that, in any case being investigated on suspicion of an offence, the person being investigated shall be given the opportunity to seek the assistance of a lawyer. However, section 11 clearly stipulates that it shall be the responsibility of the accused to select the lawyer and also cover all the costs relating to this assistance.

104. The delegation gained the impression that this right was not realized in practice as the vast majority of detainees interviewed stated that they were unable to afford a lawyer privately and therefore were not legally represented during their time in police custody. Furthermore, some of the detainees interviewed alleged that, even though they could have afforded a lawyer, their requests to contact one were simply ignored or even denied by the police. For example, some detainees held in the Dhoonidhoo Detention Centre reported that, following an incident in November 2007, several of them were beaten and their requests to have a lawyer were denied. The delegation also heard allegations to the effect that the detainees were made to wait for access to a lawyer for prolonged periods of time, up to 96 hours.

105. The presence of a lawyer during police interrogation can have a deterrent effect on individuals who might otherwise try to obtain information or confessions by force from people in their custody. If the detained person has a right to consult with a lawyer in private as from the outset of custody, the detainee is also able to report any ill-treatment experienced; on the detainee's request the lawyer can lodge a complaint. If such information is expressed under professional secrecy, it may still be used anonymously to prevent abusive practices in future. The presence of a lawyer during police questioning may also work as a protection for police officers in case they face unfounded allegations of ill-treatment. The right to a lawyer as from the first moment of deprivation of liberty is therefore an important means of preventing ill-treatment, as well as a safeguard of due process of law.

106. However, the preventive value of access to a lawyer depends upon whether or not this right to a lawyer can be exercised in practice. If people deprived of liberty cannot afford a lawyer and one is not provided, the right to a lawyer and its value in the prevention of ill-treatment remain purely theoretical. The SPT emphasizes that all persons deprived of their liberty should enjoy access to a lawyer and that at as early a stage of the deprivation of liberty as possible, including already at the first police questioning.

107. In light of the above,²⁹ **the SPT recommends that the authorities ensure that all persons deprived of their liberty are entitled to benefit from the assistance of a lawyer as from the outset of deprivation of liberty. They should be systematically informed about this right by the police and be provided with reasonable facilities to consult a lawyer in private. Furthermore, if a detainee does not have a lawyer of his/her own choice, he/she should be entitled to have one assigned to him/her, and benefit from free legal assistance if he/she does not have sufficient means to pay.**³⁰

8. Access to a doctor as a safeguard against ill-treatment

108. If a person deprived of liberty is ill-treated by the police, that person may quite understandably be afraid, while still in the hands of the police, to tell someone else about it. If the person does want to complain about the ill-treatment, a doctor could be a likely choice, since

²⁹ See also Chapter I, section B 7 above.

³⁰ See Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173 (9 December 1988), Principle 17.

doctors are supposed to work independently of security forces and since consultations with doctors are supposed to be private and confidential. Furthermore, if any injuries have been inflicted, the doctor is best placed and equipped to examine and record these.

109. From the preventive perspective, if persons deprived of liberty are routinely examined by a doctor in private while in police custody, this may have a deterrent effect on any officer who might resort to ill-treatment. The SPT considers that access to a doctor without the presence of police staff is an important safeguard against ill-treatment.

110. However, from accounts by doctors, police officers, and detainees it became clear that such routine examinations were carried out neither in local police stations nor in major detention centres. Moreover, the delegation learnt that the police officers were systematically present when detainees saw a doctor. Thus it appeared that no culture of medical confidentiality existed in the encounter between the patient and the doctor. Furthermore, on numerous occasions the delegation heard that, as a routine, patients were handcuffed while interviewed and examined by the doctor. This routine practice is not acceptable and constitutes degrading treatment. It is also undermines confidence between the patient and the doctor.

111. The SPT recommends that the authorities introduce systematic medical examination of all persons in police custody and that these examinations are carried out without using any restraints measures. The SPT also recommends that medical examinations be conducted in accordance with the principle of medical confidentiality; non-medical persons, other than the patient, should not be present. In exceptional cases, where a doctor so requests, special security arrangements may be considered relevant, such as having a police officer within call. The doctor should note this assessment in the records, as well as the names of all persons present. However, police officers should always stay out of hearing and preferably out of sight of a medical examination.

112. In addition to proper medical examination, proper recording of injuries of persons deprived of their liberty by the police is an important safeguard, contributing to the prevention of ill-treatment as well as to combating impunity. Thorough recording of injuries may well deter those who might otherwise resort to ill-treatment. **The SPT recommends that every routine medical examinations is carried out using a standard form that includes (a) a medical history (b) an account by the person examined of any violence (c) the result of the thorough physical examination, including a description of any injuries and (d) where the doctor's training so allows, an assessment as to consistency between the three first items. The medical record should, upon request from the detainee, be made available to him/her or to his/her lawyer.**

9. Recording of custody as a safeguard against ill-treatment

113. During the visit, the delegation reviewed the custody records in all police stations visited and was informed about the system for keeping of registers and books. In some police stations visited, the delegation was also informed that the police have an obligation to provide an arrest sheet for the detainee within 24 hours of the arrest. At the time of the visit, the records were mainly kept manually. The SPT notes the information provided by senior police officers that an electronic system of recordkeeping has started to be implemented.

114. When reviewing the registers, the delegation noted recurring omissions of important items of information, such as the time of release from custody or transfer to another detention facility and the number of the cell where the detainee was placed. Furthermore, the registers contained no records that information on rights was given to the detainees.

115. The lack of systematic record keeping leads invariably to inaccuracies and incomplete records which cannot be cross-referenced. The SPT can cite as an example the case of Mr. Hussein Solah who was found dead in the harbour of Malé on 15 April 2007: The registers at the centre confirmed that he was arrested on 9 April 2007 for suspicion of possession of drugs. On 12 April he complained of headaches at 21:17. When offered medication, he refused it. He was moved to cell number 2. On 13 April at 00:40, he was removed to cell number 5, as he was violent. However, no further time of release was recorded in the log books, up until he was found dead on 15 April 2007. **Further to the request for the death certificate made in the note verbale dated 3 March 2008, the SPT requests a copy of the autopsy report of Mr. Solah.**

116. The SPT considers that the proper recording of deprivation of liberty, including all movements of detainees, possible complaints, requests and subsequent follow-up, is one of the fundamental safeguards against ill-treatment, as well as a prerequisite for effective exercise of due process rights, such as the right to challenge the lawfulness of deprivation of liberty. Furthermore, proper recording of custody is also a tool that enables proper and effective supervision of custody by officers exercising supervisory functions and serves as protection for police officers against false allegations about ill-treatment or omissions.

117. The SPT recommends that the Maldives Police Service develop a standardised and unified record for registering contemporaneously and comprehensively all key information about an individual's deprivation of liberty and that police staff be trained to use this appropriately and consistently. The SPT recommends that the records should include at least the following information:

- (a) The reasons for the deprivation of liberty, the exact time when it started and how long it lasted;**
- (b) Person responsible for authorization of the deprivation of the liberty and person making the entry in the register;**
- (c) Precise information about where the person was held during that period, including any movements within and between establishments;**
- (d) When the person first appeared before a judicial or other authority;**
- (e) Requests and complaints;**
- (f) Time when the person was informed about his/her rights, time of notification of custody, the identity of the notified person as well as the officer who made the notification;**
- (g) Time when the person was seen by a doctor or received a visit from a family member, lawyer or other person.**

118. **Furthermore, the SPT recommends that, in order to ensure systematic recording of all relevant information, supervising officers should exercise strict oversight of record keeping.**

10. Complaints process

119. As noted in the chapter I above, investigation of complaints against the Police will be vested in the not yet functioning Police Integrity Commission established in August 2006 and it is also possible to lodge a complaint to the HRCM. Furthermore, the delegation was informed by senior police officers that an internal investigation department examines complaints, and that a police disciplinary board had been established. **The SPT requests the Maldivian authorities to provide further information on the mandate and powers of the internal investigation department and the Police Disciplinary Board, the number and type of complaints lodged during the years 2007 - 2008 and the outcome of these investigations. The SPT also requests information as to whether there are any other bodies or offices vested with powers to examine complaints made against police, and if so, about their mandates, the number of cases examined in 2007 and 2008 and the outcome of the examination.**

120. During the visit, the delegation gained the impression that there are no formal rules or established practices regarding ways to allow a detainee to lodge a complaint about his or her treatment in custody. Should a detainee wish to lodge a complaint, he or she appears to be dependent on the good will and understanding of the officer on duty who, in practice, decides whether or not to transmit the complaint to the competent authorities. Furthermore, the delegation was told by many detainees that they had no trust in the system of confidential complaints to outside bodies. For example at the Addu Atholhu police station detainees stated that they would not trust even the HRCM, as they perceived it as being part of the Government. The SPT notes with concern that, in some establishments visited, detainees also alleged that there had been reprisals against persons who had lodged a complaint.

121. One of the basic safeguards against ill-treatment is the right of a detainee or his/her counsel to make a request or to lodge a complaint regarding treatment in custody to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with powers of review and redress.³¹

122. **The SPT recommends that the right of detainees to lodge a complaint is clearly established in law and that detainees are fully informed about this right by the police officers and/or staff working in the police detention facilities. In this connection the SPT wishes to emphasize the duty of the Maldivian authorities to ensure that there are no reprisals as a result of lodging a complaint.**

123. **Furthermore, the SPT recommends that the authorities ensure that the detainees have the possibility to lodge a complaint in practice, and that the principle of confidentiality of complaints is duly respected. Police officers or staff working in detention**

³¹ See Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173 (9 December 1988), Principle 33.

centres should not interfere with the complaints process, filter the complaints addressed to competent authorities or have access to the content of the complaints. The SPT recommends drawing up rules for use by the police officers regarding handling of complaints, which should include modalities concerning referral of the complaint to the competent authorities, the obligation to respect the anonymity of the complainant, and the duty to make available writing materials and envelopes for detainees wishing to lodge a complaint.

124. As there are currently several authorities in the Maldives vested with the power to examine complaints, it is important to have an overview of the type of the complaints lodged and the outcome of the investigations and possible sanctions imposed. This information systematically compiled would be an effective tool in prevention of ill-treatment as it would give the authorities an overview of compliance by police officers with their duties toward detainees, and the possibility to identify and analyze gaps in the existing safeguards and the need for training, legislative changes or other targeted measures to eradicate ill-treatment. **The SPT recommends that the Maldivian authorities examine the possibility to establish such an information system.**

125. The SPT also wishes to emphasize that the mere existence of complaints mechanisms is not enough; they must be, and must be seen to be, independent and impartial, and should offer guarantees of effectiveness, promptness and expeditiousness.

11. Access to monitoring bodies as a safeguard against ill-treatment

126. As noted above in Chapter I, section B 1, it remained unclear to the SPT whether the HRCM has a mandate to monitor places of deprivation of liberty operated by or under the responsibility of the police.

127. With the designation of the HRCM as the National Preventive Mechanism (NPM), the SPT looks forward to the development of a proactive and regular programme of visits to police stations and other police custodial facilities. Regular visits, including unannounced visits, to police facilities should also include interviews with detainees in private.

128. As noted in Chapter I section B 5 above, the new Constitution also vested in the Prosecutor General the power to monitor and review the circumstances and conditions under which any person is arrested, detained or otherwise deprived of freedom prior to trial.

12. Training and supervision of police officers

129. The SPT notes with concern that the police officers working at the Dhoonidhoo Detention Centre stated that they had not received any training for their work at the detention centre. **The SPT recommends that the police officers and other staff members working in the police stations and police detention facilities are provided with adequate training for work in custodial settings.**

130. During the visit, the delegation paid particular attention to the oversight and supervision exercised by officers in charge and other senior police officials over the work of police officers. The delegation observed that, in practice and in particular on the more remote atolls, the police officers in charge seemed to experience very little supervision by more senior officers. For

example, in the Ha. Dhidhdoo Police Station the delegation was informed that an inspector from Malé police came only once in 6-8 months, and that no other internal mechanisms of superior control existed.

131. The SPT considers that proper supervision and oversight of subordinates is an essential safeguard against ill-treatment. The SPT believes that the absence of effective oversight by senior officials of the treatment of detainees by the police officers, and possibly even their silent approval of the methods used, may lead some police officers to resort to ill-treatment. Whereas the delegation does not assume that the alleged ill-treatment is the result of direct orders, the lack of oversight and supervision does not absolve senior officers from their responsibility to ensure that ill-treatment does not occur. **The SPT recommends that the authorities ensure effective oversight and supervision of the work of police officers by senior officials and superior authorities.**

132. Furthermore, the SPT wishes to underline that those exercising superior authority cannot avoid accountability or escape criminal responsibility for torture or ill-treatment committed by subordinates where they knew or should have known that such impermissible conduct was occurring, or was likely to occur, and where they failed to take reasonable and necessary preventive measures. **The SPT recommends that the relevant authorities ensure that the responsibility of any superior officials, whether for direct instigation or encouragement of torture or ill-treatment or for consent or acquiescence therein, be fully investigated through competent, independent and impartial prosecutorial and judicial authorities.**³²

133. The SPT welcomes the information provided by senior police officers on measures being taken in the Police to ensure better oversight of Police to prevent the occurrence of ill-treatment. These measures would include, among others, preparation of an integrity code, “Statement of values”, covering issues such as how the police should act toward detainees, how to carry out interrogations and the audio-video recording of interrogations. **The SPT wishes to be kept informed of any developments to this effect. The SPT recommends that, as a means of preventing cases of torture and ill-treatment, interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest or detention should be kept under systematic review.**³³

13. Children deprived of their liberty

134. During the visit, the SPT interviewed children deprived of their liberty held at the Ha. Dhidhdoo Police Station and at the Dhoonidhoo Detention Centre.

135. The SPT emphasises that the children in conflict with the law should benefit not only from the same safeguards as adult detainees, but also from specific safeguards intended to ensure that

³² In line with the general comment No. 2 of the Committee against Torture, CAT/C/GC/2, 24 January 2008, para. 26.

³³ In line with the general comment No. 20 of the Human Rights Committee on prohibition of torture and cruel treatment or punishment, 10 March 1992, para. 11.

children are treated in a manner which reflects their specific needs. In this respect, the SPT refers in particular to the general comment No. 10 of the Committee on the Rights of the Child on Children's rights in juvenile justice.³⁴

136. In light of the above, and further to the recommendations made elsewhere in the report, the SPT recommends that the authorities ensure that a parent or other guardian be present every time a child is questioned by the police and that children enjoy unrestricted access to a lawyer. The SPT further recommends that children should always be held separately from adult detainees, preferably in separate institutions; and that holding facilities for children should fulfil adequate hygiene standards and provide possibilities for outdoor exercise; and that staff working in these facilities should be provided with adequate training to work with underage detainees.

137. By a note verbale of 22 June 2008 the authorities acknowledged the generally poor conditions for juveniles held in the Dhoonidhoo Detention centre and gave assurances to the SPT that plans were underway, with the assistance of the Ministry of Gender and Family, to construct a separate facility for juveniles which would fulfil acceptable standards for juveniles. **The SPT requests to be informed of the opening of a separate detention facility to accommodate children in conflict with the law.**

138. The delegation got access to a "Medico Legal Report" concerning a 15 year old Maldivian girl who, in 2007, was brought by the police to a local hospital for a gynaecological examination "since the police wanted to confirm if she had had sexual relations". It appears implicitly from the medical document that the examination was done without the girl's consent, and the report did not contain any remark as to whether her parents had been informed and called to be present during the examination. Furthermore, the legal basis for the examination was totally unclear: it did not appear from the report that she had claimed to be victim of a crime, nor was there any information to the effect that she was suspected of having committed an offence.

139. In the light of the above, the SPT underlines that a forensic medical examination must always have a clear legal basis, and that examination of minors should always be safeguarded by the presence of parents or other guardian, unless a minor clearly expresses the contrary. The medical report on such an examination should include the legal basis, all persons present in the examination and whether any force was used during the examination, and if so, its nature and the reason for using it.

14. Material conditions in police facilities

140. *Malé Custodial (Atholhuvedi detention centre)*: The custody facility consisted of six big dormitories and a small yard which was also used to accommodate detainees. The total capacity of the facility was reported to be 120 persons. At the time of the visit 137 persons were held in the facility; four juveniles were held together with adult detainees in one of the cells.³⁵

³⁴ CRC/C/GC/10, 25 April 2007.

³⁵ See recommendation under paragraph 136.

141. Cells of 16.4 sq. mt. were holding 20 persons, resulting in less than one square meters of space for one person. This is unacceptable. The number of detainees held in the facility was so high that even the small yard was used to accommodate a significant number of detainees in cramped conditions. Almost all were handcuffed and some to their chairs. These detainees did not have access to shelter from the rain, and the delegation also heard a number of complaints that they had difficulties with access to toilets. The delegation interviewed also two women who said that they had been held for several days in the yard, handcuffed to the chairs and surrounded by male detainees, before being moved to another detention centre. **The SPT considers that the practice of holding detainees handcuffed all day and night constitutes inhuman and degrading treatment. The SPT recommends that this practice should cease forthwith. Furthermore, the SPT is of the view that the yard is not a suitable place to accommodate detainees, in particular women.**

142. Except for cell No. 5, the cells were equipped with integral toilets and showers. The detainees held in cell No. 5 alleged problems with access to the toilets. One of the cells had no access to natural daylight and weak ventilation. The only water tap was in the room in which detainees were tested for drug abuse. Consequently, almost all detainees alleged problems with access to drinking water. Facilities for hygiene in general and for hand washing in particular were poor, particularly considering that food for all detainees in the cell was served on a common dish and that they had to eat with their hands. There was reportedly no opportunity to have a shower or take care of personal hygiene.

143. *Dhoonidhoo Detention Centre* comprised of five cell blocks. At the time of the visit, approximately 187 detainees were held in the facility, including female detainees and children in conflict with the law.

144. Block A was separated from the rest of the complex by a high wall. It comprised of 10 small cells, measuring 4.4 m² each (some of them damaged and unused). The cells were intended for single occupancy but two cells held two persons each. Each cell had an additional annex with a seat toilet. The front of the cells were made of bars, allowing insects and rodents to enter in the cells. The cells were equipped with a shelf, a table and a chair and a bed (platform). The cells had sufficient access to natural light and were reasonably well ventilated. However, there was no artificial light in the cells, so at night they were allegedly completely dark. Block B was also separated from the rest of the facility by a wall, and had 10 cells. The cells measured 7.05 m² and were equipped with integral toilets. The cells were intended for double occupancy, and were equipped with a shelf, table, chairs and a sleeping platform. It appeared that the second detainee had to sleep on the ground as the sleeping platform was only for one person. The detainees interviewed by the delegation complained that it was very hot in the cells and, when it rained, water ran into the cell.

145. Block C was of a conventional type and had 30 cells. Each cell measured 5.45 m² and was intended for two to three detainees. The cells were equipped with concrete beds without mattresses. The cells enjoyed weak access to natural light. Block D was used to accommodate children in conflict with the law. There were five blocks of multiple occupancy cells, measuring between 15 and 20 m². Hygienic conditions in the cells were poor, and the cells were not equipped with beds or mattresses. Rodents and insects had easy access to the cells.

146. The Block G was used to accommodate female detainees. It was composed of cells measuring 6 m² with an integral annex for toilet measuring 1.5 m² and accommodated two detainees. As the cells were equipped with only one bed, the second detainee had to sleep on the floor. One pillow, mattress and blanket was provided by the centre. The door and small window were barred, and there was not enough air and light inside. The cells were generally dirty.

147. *Ha. Dhidhdoo police station*: there were five cells each measuring 5.6 m² and were intended for single occupancy. However, the cells were used to accommodate up to three detainees. No mattresses were provided for the detainees, and during the rainy days water flooded the cell. There was a small yard, but not all detainees were allowed to go there.

148. *Addu Atholhu police station*: The facility consisted of seven cells, each measuring 6.3 m². The cells were intended normally for two to three persons. The cells had no windows, enjoyed weak access to natural light and had no artificial lighting during the night. The personal belongings of the detainees were stored on the floor. There was a small toilet in the back yard. Both detainees and staff stated that cells suffered from flooding during rainy days. There were no facilities for outdoor exercise.

149. *Fuamulah (Fuahmulaku) police station*: There were three cells, each measuring 5.2 m² and intended to accommodate two to three persons. The cells were not equipped with mattresses.

150. *Kulhudhufushi police station*: The two cells measured 7 m², were intended for no more than two persons each and were equipped with a floor toilet and mattresses. The cells were well lit, ventilated and clean. There were small windows with bars high in the wall; artificial light entered the cell from the corridor through the iron door with bars. Food was regularly provided four times a day; the food was reportedly the same as that provided for the police officers. The SPT was informed that the detainees were taken out into the yard to have their meals and that they could also spend some time outside in the yard.

151. The SPT recommends that every detainee held in the custodial facilities of police stations or in police detention centres should be provided with sleeping accommodation meeting all requirements for health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lightning, heating and ventilation,³⁶ as well as a mattress to sleep on and access to sanitation, food and drinking water. Care should be taken to prevent water entering to cells during the rain, and insects and rodents entering the cells. Anyone held for more than twenty-four hours should be offered outdoor exercise every day.

³⁶ In line with principles 10-13 of the Standard minimum rules for the treatment of prisoners, ECOSOC resolution 663 C (XXIV) of 3 July 1957 and 2076 (LXII) of 13 May 1977. Persons held in police custody fall within the scope of application of the Part I and Part II, section C, of the rules, see rules 4 (1) and 4 (2).

15. Separation of persons in remand custody from persons serving their sentences

152. The SPT was confronted with several situations in which it was not clear what the legal status of the detainees was, as persons detained by the police, persons remanded in custody and persons serving their sentences were apparently all held in the same premises in Malé Custodial. **The SPT recommends that untried detainees should be kept separated from convicted prisoners.**³⁷

16. Health care

(a) Access to health care

153. In the ordinary police stations visited there was no effective system of medical cover. Detainees' requests to see a doctor were filtered by officers who had had no training in health issues, and the delegation heard numerous allegations from various institutions that requests to see a doctor were ignored. When a medical examination of a detainee was performed, this was done in a medical facility, e.g. a hospital. The situation was slightly better in the two main custody centres, Malé Custodial and Dhoonidhoo Detention Centre, which had medical facilities with full time employed doctors and nurses. However, in these institutions, the delegation heard many allegations that requests to see a doctor were filtered by police staff with no training in health issues and requests were sometimes even ignored.

154. The SPT recommends that, since there are no staff members present in police facilities with the medical qualifications necessary to assess the health needs of persons deprived of liberty, requests for access to a doctor must be granted without delay and without prior filtering by police officers.

155. Some requests were on the grounds of serious withdrawal symptoms, including fits and fainting. In Malé Custodial detainees told the delegation that they had witnessed three fits of a fellow detainee; he was - according to the report of other detainees - taken out of the cell, placed in handcuffs in the yard and given no medical attention. Furthermore, during its visit the delegation saw one detainee having a fit. Several police officers were around but did not intervene in any way, indicating lack of training of staff in management of health problems among detainees. In all probability the attack reflected a withdrawal condition underlining the insufficient management of serious withdrawal condition that must be very common among detainees since more than 75% of all incarcerations were reportedly linked to drug offences.

156. The SPT recommends that requests from detainees to see a doctor should not be filtered by non-medical staff. Police officers should have training and instructions in how to deal with medical emergencies, even without the existence of an explicit request from detainees for medical intervention. Prisoners in obvious need of medical attention, e.g. having fits, should be transferred for medical treatment without delay.

³⁷ In line with principle number 8 of the Standard minimum rules for the treatment of prisoners, ECOSOC resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

(b) Medical record keeping

157. In Malé Custodial there were no individual medical records whereas in Dhoonidhoo personal medical files were opened only for those detainees who requested medical assistance either upon arrival or at a later stage. Furthermore, at Dhonidhoo some of the records did not contain all necessary information.

158. The SPT emphasizes that good record keeping is an essential part of the doctor's work; this applies not only to the routine examination upon arrival, but to any aspect of each encounter with patients. Furthermore, documentation of torture and other forms of ill-treatment is the first step in the medical contribution to preventing torture and other forms of ill-treatment and combating impunity. The doctor must also have clear guidelines on how, when and to whom alleged and medically documented cases of ill-treatment should be reported. If the detainee does not want his/her name to be included in the report, the doctor should do it in a way that safeguards the anonymity of the detainee. **The SPT recommends that individual files should be opened for every detainee upon arrival at police detention centres and be updated systematically and comprehensively after every medical examination or intervention and that clear instructions are established for the doctors on how to document and to report possible cases of torture or ill-treatment.**

159. The delegation was concerned about the fact that medical confidentiality as to record keeping appeared to be virtually absent in medical clinics, where such existed. The members of the delegation observed that police officers had access to medical files. The SPT considers that confidentiality between patient and doctor is an essential part of their relationship, including in police custody and prison settings and a potentially important factor in preventing ill-treatment and combating impunity. **The SPT recommends that immediate measures are taken to establish and maintain confidentiality in the keeping of medical documents and records.**

(c) Detainees with psychiatric conditions

160. Delegates heard allegations that detainees with psychiatric conditions were treated in a harsh manner to control odd behaviour.

161. The SPT is aware of the scarcity of psychiatrists in the country; however, the sparse availability of specialist resources underlines **the need for some basic training of officers in the identification of serious mental conditions and clear guidelines for referring such detainees to a medical facility.**

17. Allegations of ill-treatment and corroborative findings

162. The delegation received numerous credible allegations from detained persons that they had been physically ill-treated while in the custody of police officers, both at the time of their apprehension or arrest, and in the police detention facilities to which they were transferred.

163. There was a consistent pattern of the allegations: whilst handcuffed, detainees said that they had been pushed and kicked by police officers. In addition, on many occasions and from a variety of locations in various atolls the SPT heard about the abusive use of handcuffs by police

officers to restrain people being questioned or held at the police detention facilities in painful squatting positions for prolonged periods of time. For example at Malé Custodial the delegation heard allegations that detainees in that establishment were often held handcuffed for weeks. Furthermore, almost all the detainees accommodated in the yard were held handcuffed, some to the chairs. The delegation also heard numerous allegations of beating of detainees in the yard by the police officers, and allegations that detainees' hands had been burned with cigarette butts. On two occasions the delegation heard allegations of suspension from handcuffed wrists. The clinical findings and injuries documented by the medical members of the delegation were in complete agreement with these allegations of ill-treatment.

164. In discussions with the SPT, the members of the Public Complaints Bureau were sceptical about the fact that torture is practised in the Maldives because police investigations now take place in the presence of lawyers and are videotaped. Furthermore, they emphasized that the Bureau had not so far found any substantiated cases of torture. In the note verbale of 22 June 2008, the authorities noted that whereas isolated incidents may occur, they did not agree with the conclusion that ill-treatment is a wide-spread practice in the Maldives. In the note a reference was also made to the fact that custodial department staff are continuously monitored with the CCTV system, and it was noted that the authorities believe that these allegations are part of an ongoing collusion by certain prisoners to discredit the Maldives Police Service and the Government of Maldives.

165. The SPT acknowledges that a CCTV system can be an important means to prevent ill-treatment but stresses that the existence of such a system does not exclude the occurrence of torture and ill-treatment. Furthermore, the SPT notes that the alleged ill-treatment had taken place in locations outside the range of the CCTV system. On the basis of the allegations of ill-treatment heard from the detainees coupled with the findings of the medical members of the delegation, the SPT concluded that ill-treatment of persons deprived of their liberty still occurs in the Maldives.

166. From a preventive perspective, it is important to acknowledge the risk of torture and other forms of ill-treatment during apprehension, police investigation and in police custody. Furthermore, if adequate safeguards were in place, and police officers knew that they would be held accountable for their actions, physical ill-treatment of this kind would be much less likely to happen. **The SPT recommends that the authorities take steps to ensure that there are adequate safeguards in place to prevent torture and ill-treatment. Furthermore the SPT recommends that all allegations of ill-treatment be fully investigated through competent, independent and impartial authorities.**

B. In prisons

1. Preliminary remarks

167. The delegation visited Maafushi prison and the Malé Remand Centre, the latter also being referred to in the Maldives as Malé prison/jail, both operating under the Department of Penitentiary and Rehabilitation Services (DPRS). The delegation understood that the Maafushi prison is the only official prison in the Maldives designated to accommodate sentenced prisoners, the Malé Remand Centre being a temporary holding facility which will be closed upon opening of the planned new prisons. At the time of the visit, persons serving their sentences and

persons sentenced to banishment until they could be sent to the island were held in that facility. In addition, the delegation visited two prisons which were under construction, one in Malé and one in Hithadhoo.

168. In the Maldives, there are no specific prison facilities for children under 18 years of age who are serving their sentences. From discussions with the authorities the delegation understood, that instead of prison, children sentenced to deprivation of liberty are confined to house arrest. The SPT takes note of the information provided by the Minister of Home Affairs, according to which the authorities were planning to open a prison for children under 18 years of age. **The SPT requests to be informed on the opening of this prison for children. Furthermore, the SPT requests detailed information on the facilities for boys and girls in the establishment.**

2. Inclusion of time spent in pretrial detention in sentence

169. Many detainees told the delegation that they spent a long time on remand because they could not afford the bail. However, as this pretrial period is not subtracted from the sentence it increases the total length of time to be served; this may contribute to a perception of inequities in the current system. Moreover, such practice adds to the strain and overcrowding of the prison facilities.

170. **The SPT requests information on whether, with the reform of the criminal justice system, the Governments has planned to introduce any changes in the policy relating to the inclusion of time spent on remand in sentence calculation.**

3. Women in prisons

171. Women serving their sentences were held in a separate unit at Maafushi prison (unit 5, consisting of three sub-units. F1, F2 and F3). The delegation was informed that usually female detainees were guarded by male staff, as there were not enough female prison staff. Disciplinary measures were also carried out by male staff.

172. Almost all of the female prisoners interviewed by the delegation said that they felt insecure in their dormitories, since male detainees could easily access them. They cited as an example one incident where two male prisoners had escaped from the male unit and freely visited the female part of the prison, where they were later escorted out by the officers of the Emergency Support Group (ESG).

173. In SPT's view, this suggests that efforts are required to ensure that an appropriate complement of women staff is available in all prisons holding women, and that the female unit is completely separated from the units for men. In discussions with the Director of DPRS, the delegation was informed that a new prison building for women was already finished, but that temporarily foreign prisoners were held there. By a note verbale of 22 June 2008 the authorities informed the SPT that a separate secure prison called "Women's Jail" was opened in the Maafushi Jail Compound on 13th December 2007 and that 16 female officers were trained to take care of the 51 female prisoners held in that facility at the time the note verbale was sent. According to the note, there are three female officers on duty at all times, and apart from very special circumstances, male officers are not allowed to enter these premises. Even in these circumstances a female officer would accompany the male officer. **The SPT notes this positive**

development and recommends that the authorities ensure that the whole of the premises allocated for women is entirely separate from those allocated for men. Furthermore, it is necessary to ensure an adequate level of female staffing in those premises day and night.

174. The female prisoners interviewed informed the delegation that they had very limited access to activities, for example only two out of 40 women currently held in sub-unit F2 had access to work (cleaning), and that the contract had to be renewed every six months. A positive aspect mentioned by the women was that, since October 2007, they were offered the possibility to take classes in English, maths, art, local language (up to 6th grade) and that they could move freely inside the female unit from 06.00 a.m. to 06.00 p.m.

175. In Maafushi Prison, the delegation observed that no female medical staff were working there on a permanent basis, but a female doctor visited the establishment once a month. As women prisoners could not be examined by the male prison doctor, this situation meant in practice that they had to wait, sometimes for weeks, to be transferred to Malé for a medical examination. **The SPT recommends a more frequent presence of a female doctor in the Maafushi prison to ensure access of female prisoners to a doctor when their health condition so requires.**

4. Foreign nationals in prison or held in remand custody

176. The delegation noted that the already high number of imprisoned persons was further increased by the presence of foreign nationals sentenced or waiting to be sentenced in the Maldives. In the interviews with these persons, the delegation heard numerous allegations of discrimination which included, for example, not having adequate facilities to prepare their cases, not having access to interpretation, and that notification of the embassy or consulate of the their respective countries of origin about their imprisonment was often delayed. Furthermore, the delegation heard allegations that foreign prisoners were not granted the same privileges in terms of contacts with family members, and that they were deprived of access to outside exercise. They also complained of discrimination as to access to a doctor and medical care, and as to distribution of food.

177. The SPT wishes to emphasize that it is one of the fundamental principles of treatment of prisoners that there be no discrimination on the basis of, among other, national origin.³⁸ **The SPT recommends that the relevant authorities ensure that prisoners and detainees of foreign nationality are treated without discrimination and that all basic safeguards apply equally to this category of persons.**

178. Of particular concern for the delegation was the case of a Chinese remand prisoner who had been detained allegedly for 13 years (since 4 November 1994) without trial and no formal indictment. At the time of the visit, he was held at the Maafushi prison. The delegation drew his case to the attention of the Attorney General after the final talks, and the SPT welcomes the efforts of the Government of the Maldives towards finding a solution to his case. **The SPT**

³⁸ See Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173 (9 December 1988), Principle 5, paragraph 1.

requests information on any steps taken to resolve the situation and to transfer the person concerned to his home country, as well as of any compensation awarded to him by the Maldivian authorities.

5. Medical screening on entry from police custody as a safeguard against ill-treatment

179. The screening of people arriving from police custody in prison is of key importance for the prevention of ill-treatment by the police. The entry point into prison is a critical time for detection of any injuries and assessing whether ill-treatment may have occurred. The delegation therefore paid attention to the practice as regards medical screening on entry and the procedures for reporting cases of possible police ill-treatment.

180. The delegation was informed at Maafushi prison that all prisoners were examined by a nurse upon their arrival, and understood that no initial screening of new arrivals was performed at Malé Remand Centre. The delegation noted the existence of a form that should be filled in by the doctor immediately after arrival of each new prisoner and that the examination did not include any compulsory testing or search of body cavities. However, while this form for routine medical examinations existed, the delegation observed that it was only sporadically used and medical examinations were most commonly carried out only at the request of the detainees.

181. The SPT considers that routine medical examination upon arrival of a prisoner and good record keeping are important tools in the prevention of torture and ill-treatment. It is equally important for the assessment of the prisoner's needs for medical care. In particular, in the context of the extremely high prevalence of drug abuse among prisoners, the medical examination at entry could be an avenue for approaching this problem on an individual basis and for offering counselling and treatment of withdrawal symptoms, thus helping the newcomer not to resort to the illegal drugs available in the prison.

182. Furthermore, the SPT considers that there should be an established procedure for doctors to document and report any case of violence occurring prior to entry into prison. A lack of such a procedure represents a gap in the safeguards against ill-treatment and would favour impunity and thereby jeopardize the prevention of ill-treatment.

183. The SPT recommends that medical screening of all prisoners should take place upon arrival. If the initial screening is performed by a nurse, the detainees should be offered the opportunity to be seen by a doctor as soon as possible. The medical examination should be thorough enough to reveal any injuries. The SPT further recommends that every routine medical examination is carried out using a standard form that includes (a) a medical history (b) an account by the person examined of any violence (c) the result of the thorough physical examination, including description of any injuries and (d) where the doctor's training so allows, an assessment as to consistency between the three first items. The report should be made available to the prisoner and to his or her lawyer.

184. **The SPT further recommends that a procedure be established, with due consideration for medical confidentiality and the consent of the individual, for all cases of violence and alleged ill-treatment documented by doctors to be reported directly to the prison director for referral to the bodies responsible for monitoring of conditions in police detention facilities or in prisons and for complaints.**

6. Prison staff

185. The SPT takes note of the efforts made to train prison staff. In discussions with the Director of the DPRS, the delegation was informed that a police and human rights training programme was conducted in 2006 with the support of the Commonwealth. This training programme was organized by the Law Enforcement Training Centre of the Maldives Police Service in collaboration with the Ministry of Home Affairs and Human Rights Unit of the Commonwealth Secretariat. Ten staff members from the DPRS participated in this training programme. Moreover, some 20 prison staff members are sent abroad to gain experience every year.

186. The delegation was informed by both the supervisors and staff that before a new recruit is accepted, he undergoes a six weeks course in administration, self-defence, communication, problem solving and some law, and four weeks of practice. The training sessions for prison staff which the delegation observed left a good impression. **The SPT welcomes this important on-going process of recruitment and training of new staff and encourages the relevant authorities to continue their efforts to train staff.**

187. However despite these efforts, the SPT noted the lack of female staff and of staff for the night shifts. The Director of the DPRS informed the delegation that for a total prison population of 700 people there were 400 staff members, working in shifts, including the so called non-uniformed and medical staff. For example at Maafushi prison, the head of security noted that due to low the level of staffing, staff members were afraid to enter the big dormitories, in particular at night.

188. A total of 150 male and 30 female staff members worked in shifts at Maafushi prison. In the Malé Remand Centre, the 70 prisoners currently held there were monitored by only three or four staff members per shift who reportedly did not enter the prison yard. The SPT was told by the prisoners that the staff could only be seen when distributing meals, and even then the food was given to three prisoners who then distributed it to other prisoners. In addition, the SPT delegation noted that there was no effective way to alert staff in an emergency and a general absence of a call system in cells.

189. If prisoners are left to themselves due to lack of staff or inadequate use of available resources, this easily leads to an increased risk of inter-prisoner violence and may also affect the possibilities for the staff to respond to medical or other emergencies. Furthermore, if the staff cannot enter all parts of the prison due to fear about their personal safety, this contributes to a general atmosphere of insecurity in the whole facility, adversely affecting the management of day-to-day life and increasing the risk of disproportionate use of force in response to incidents. **The SPT recommends that the authorities ensure adequate levels of staffing at all times, including female staff in facilities holding women.**

7. Inter-prisoner violence

190. The delegation heard from many prisoners that they feared violence from other prisoners and that there were reportedly tensions between certain groups of prisoners, often concerning drugs in the prison. Furthermore, one prisoner interviewed in Maafushi prison alleged that he was occasionally beaten up by other prisoners and that the prison staff did not take any measures to stop that practice and to protect him. As there was no response to these incidents from staff, he had written a complaint to the HRCM. However, while he was on home leave, other prisoners found this letter and after his return he was heavily beaten by them. After this incident, he was moved to another unit. He had complained to the staff that he left some of his personal belongings in his previous cell, and was informed later by the staff that everything had been stolen by other prisoners.

191. When the state deprives a person of liberty, it becomes responsible for that person's safety. The obligation includes protecting that person from other people in custody. Although managing inter-prisoner violence can be extremely difficult, lack of such protection is a failure in the duty of care incumbent on the State. **Staff must be properly trained and prepared to work in close contact with prisoners, to be vigilant for the signs of conflict before escalation and to take appropriate action when needed. The SPT recommends that the training of prison staff focus on building and maintaining positive relations among prisoners, as well as between staff and prisoners: the dynamic security approach to prison work.**

8. Disciplinary process

192. The delegation understood that, at the time of the visit, the disciplinary process was not laid down in a specific law, but was based on established rules and practices. In discussions with the Director of the DPRS, the delegation was informed that, for example, cancellation of family visits or home leave were used as a disciplinary sanction. The Governor of the Maafushi prison informed the delegation that segregation up to seven days could also be used as a punishment. The SPT understands that the Government is currently considering a draft Prison, Detention and Young Offender Centre Rules, which will, include provisions on disciplinary proceedings and sanctions.

193. The SPT was also shown the newly-established incidents book at Maafushi prison. According to the records, most of the incidents were benign, and the punishments imposed included, for example, cancellation of family visits for a month or of phone calls for a few weeks. The SPT wishes to commend the authorities for the establishment of this register as it is an important safeguard against ill-treatment. However, the delegation noted some insufficiencies in recordkeeping as the entries were superficial and lacked detail (for example punishments were not always recorded). **The SPT recommends that all incidents and punishments and other disciplinary measures be systematically recorded in the incident book in a manner allowing proper oversight of use of those measures.**

194. In interviews with the detainees, the delegation heard several coherent allegations of the use of beating and handcuffing as disciplinary measures, as well as humiliation by being stripped naked in front of other prisoners and prison officers and blindfolded. Furthermore, prisoners interviewed by the delegation alleged that collective punishments were also used. For example, some prisoners interviewed at Maafushi prison alleged that they once had their personal

belongings destroyed as a collective punishment, and at Malé remand centre the prisoners alleged that, after an escape attempt by one prisoner, police officers entered the premises to search the cells and confiscated all the cigarettes they found. Also cancellation of family visits was used as a form of collective punishment; this was also confirmed by the prison authorities.

195. The SPT was left with the impression that disciplinary measures were used in an arbitrary way, almost at the will of the prison administration, and that the system was not oriented to punish specific individuals but that also collective punishment was also regularly used.

196. The SPT considers that discipline in prison is an important factor in the safety of both prisoners and staff. However, it is important that safeguards are introduced to avoid abuses of the disciplinary process and to prevent ill-treatment. **The SPT encourages the Maldivian Government to adopt the draft Prison Rules and trusts that the Government will ensure that they conform to the international standards on treatment of prisoners binding upon Maldives. The SPT further recommends that the authorities ensure that no collective punishments are used. Prison managers should increase oversight of incidents and the disciplinary process to ensure that no punishments other than those provided for in law are imposed or other than by the formal disciplinary process. All occurrences giving rise to disciplinary proceedings and all disciplinary punishments should be carefully recorded in special registers, and subject to independent monitoring.**

9. Segregation and isolation

197. At Maafushi prison, the delegation visited the segregation unit which, at the time of the visit was used to accommodate both prisoners considered as “dangerous”, often on the basis of commitment of aggravated prison offences, and prisoners segregated for their own protection. The unit was located right by the seashore far from other prison buildings and was surrounded by a tall wall. It consisted of three separate units, each composed of 10 cells.

198. The delegation was informed that prisoners considered as “dangerous” were transferred to Unit 1 on the basis of a decision of the prison administration and that these decisions were not subject to appeal. Segregation should not be a permanent condition for any prisoner, but should be used only as a temporary measure imposed as a last resort for a short period of time and under appropriate judicial or other oversight. **The SPT recommends that the placement of prisoners in Unit 1 be subject to appeal. The SPT also recommends that the situation of anyone under isolation or other extreme restrictions be reviewed regularly with a view to moving them progressively to less restrictive custody.**

10. Response to the incidents in Maafushi prison in June and December 2007

199. In discussions with the authorities the SPT was informed that security for both the staff and the prisoners remained a serious issue in both prison establishments. The delegation was informed by the authorities that, in the course of 2007, two major incidents happened in the Maafushi main prison establishment, one on 5th June and the second in December at the time of the SPT visit. On both occasions, the prisoners were reportedly well organized and were in possession of various items, including cell phones.

200. The SPT was informed that the reason for the first incident was the absence of any rehabilitation programs or activities. The authorities recognized that at the time there were practically no jobs available; only three or four out of 700 prisoners were offered work (laundry and dish-washing). The delegation was informed that the riot showed the authorities the need to organize work and other activities for prisoners. According to the prison administration, the reason for the second incident was the collective cancellation of family visits for prisoners.

201. The SPT is concerned about the manner in which the ESG staff and the police responded to the rioting. According to accounts received by the delegation from the prisoners interviewed the search procedures after a mass transfer of prisoners from one unit to another were conducted in a humiliating way: prisoners were allegedly blindfolded during the transfers and strip searched in front of groups of security staff.

202. The SPT is of the view, that even under very difficult security conditions, it is incumbent upon the prison authorities to respect the dignity of people deprived of their liberty. **The SPT recommends that the authorities put in place a proactive strategy for effective management of prison institutions to address the roots causes of the incidents, to replace the existing reactive approach. The SPT considers that such measures should include, among others, organizing work and other activities for prisoners. The SPT further recommends that managers should be seen daily in the prisons and go among staff and prisoners, exercising direct supervision of staff and checking what is happening in all areas of the prisons. Managers should lead by example and promote dynamic security, with a view to increasing safety for all and preventing ill-treatment.**

11. Use of force and restraint

203. The SPT considers that it is part of the tasks of the prison staff to defuse situations which have the potential to escalate into serious incidents. Resort to the use of force in prisons should only occur in response to occurrences involving risks to staff or prisoners which the staff has been unable to avert.

204. During the brief visit, the delegation focused on the use of force by the Emergency Support Group (ESG). In the discussions with the head of the ESG, the delegation was informed that this team of special security forces was composed of 60 officers. Out of this number, 37 had been trained already, whereas the remaining 23 staff officers were still being trained at the time of the SPT visit. Most of their training was aimed at confidence building, restraining techniques, body searches and removal of agitated prisoners. The delegation noted that no training was provided on inter-personal skills.

205. The delegation was informed that members of the ESG were ordinary prison staff members who were trained to respond to emergency situations. They were not intended to enter into daily direct contact with prisoners but were called in to respond to serious incidents, such as the June and the December riots. Standard equipment for the ESG included pepper sprays, wooden batons, but no arms or stun guns. Some officers have Bianchi batons, and some would have PR24 batons soon. The delegation gained the impression that the ESG was particularly feared by the prisoners.

206. Apart from a report made available to the delegation on the June incident, there appears not to be any special register on the use of force by the prison guards or the ESG staff. The SPT considers that strict recording of all incidents entailing a risk of ill-treatment is an important safeguard for the prisoners and a tool to ensure proper oversight of all events where use of force and restraint have been deemed necessary. **The SPT recommends that a specific register be introduced and maintained, where all incidents involving use of force would be systematically recorded. These records should include, at least, the following: date and nature of the incident, nature of restraint or force, duration, reasons, persons involved and authorization of the use of force.**

207. The delegation also heard several accounts of use of handcuffs in particularly humiliating and painful way, for purposes of punishment and control. The delegation is also concerned about the alleged use of restraints as a security measure to respond to incidents. The SPT emphasizes that discipline and order should be maintained with no more restriction than it is necessary for safe custody and well-ordered prison life. Instruments of restraints, such as handcuffs, should never be applied as punishment.³⁹ **The SPT recommends that the practice of using handcuffing as a means of punishment be eliminated immediately.**

208. The June and December incidents in Maafushi as well as the response of the prison staff to those incidents suggest, that there is a need for greater oversight of responses to incidents in prison. There are risks attached to the use in prisons of special intervention teams made up of staff who do not have sustained daily working relations with prisoners and therefore have no stake in maintaining positive staff/prisoner relations when conflict arises. The SPT considers that incidents in prison should in principle be resolved by prison staff who regularly work with prisoners; the focus should be on dynamic security.

209. One of the most important safeguards against ill-treatment of prisoners is the presence of properly trained and professional staff whose interpersonal skills are such that they are able to carry out their duties without having recourse to ill-treatment or to excessive use of coercive control. **The SPT recommends a thorough review of special interventions in response to prison incidents. The review should include: rotating staff deployed in that function; providing training in the use of force in conformity with human rights principles; increasing oversight by prison managers of prison incidents; strictly regulated deployment of staff for interventions; and introducing independent monitoring of the resort to, and the operation of, such intervention.**

12. Material conditions

210. The provision of decent conditions is important for the well being of prisoners and staff. Poor material conditions are exacerbated by overcrowding and adversely affect everyone living or working in prison; they contribute to the tensions in custody and to the deterioration of relations among prisoners and between prisoners and staff, which in turn increases the risk of ill-treatment.

³⁹ See Standard minimum rules for the treatment of prisoners, ECOSOC resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, rules 27 and 33.

211. *The Maafushi Prison* is a former factory which was turned into a prison some 10 years ago. It consisted of 10 units, nine of them for male prisoners and one (unit 5) for female detainees. Unit 4 was closed due to renovation. The official capacity of the prison is 453, and at the time of the visit 505 persons were held there, among them 30 foreigners of whom one was held there in remand custody.

212. Material conditions in the establishment were generally good. For example the dormitories of unit 3 were well ventilated, clean, and enjoyed access to both natural and artificial light. They were equipped with partitioned sanitary spaces, bunk beds, some wardrobes and cupboards, shelves, tables and chairs.

213. The exception was Unit 1 which was used as a segregation unit. Cells in wing A measured 3.1 x 2.2 m, the cells in the rest of the unit being smaller. The prisoners interviewed by the delegation complained about lack of mattresses and unsanitary conditions. In discussions with the Director of the DPRS it was alleged that mattresses were destroyed by the prisoners themselves. **The SPT recommends that all prisoners, including those held in segregation, are provided with appropriate bedding with mattresses, which, if necessary, are made of special indestructible material suitable for use in prisons. The SPT further recommends that proper sanitary facilities should be made available for persons held in that unit.**

214. In the *Malé Remand Centre* the prisoners were held in cage-type dormitories each equipped with beds for approximately 20 persons. At the time of the visit 55 persons were held in the facility, and the delegation heard allegations that a large number of prisoners were moved to other facilities before the visit. The building itself was in a very poor state of repair; dormitories had poor access to daylight and had no proper ventilation system. The hygienic state of the facility was poor, and the dormitories had almost no other furniture except beds. In SPT's view the conditions in the Centre are unacceptable for any category of prisoner; in particular, it is an utterly unsuitable place to hold sentenced prisoners, some of whom were facing very long periods of imprisonment.

215. In discussions with the Director of the DPRS, the delegation was informed that the authorities were aware of the poor conditions in the Malé Prison, and that it was to be closed soon after the new prison was opened. **The SPT requests to be informed of the closing of the Malé Remand Centre.**

216. The delegation also visited *the new prison building in Malé*. The design of the new prison was based on a new architectural model for correctional institutions. The main feature of the prison was a unit consisting of a number of cells located around an indoor yard, with a guard booth made of glass. There are three different sizes of cells: the small cells for single occupancy measuring 10 m², bigger cells intended for two or three prisoners and dormitories intended to accommodate 16 persons. There was a toilet and water tap in each cell.

217. The delegation paid attention to the fact that these new cells were dark due to weak access to natural light, dark colours used in the cells and elsewhere in the prison (dark red and dark green) and the fact that there were no windows facing outside but only small indoor windows. Furthermore, the delegation noted the lack of privacy in the toilet area, the lack of a yard for

outdoor exercise, and the lack of space for activities and meetings with family members. **The SPT recommends that these design flaws be addressed before opening of the prison and requests to be informed of its opening.**

218. The authorities had informed the delegation that construction work for *a new prison on the south Atol of Gan* was currently underway. The SPT visited the building under construction in Gan, however, it appeared to be planned as a new Hithadhoo Police station and detention facility rather than a new prison. In this new establishment there was a complex of 10 cells each measuring 6.3 m². The cell complex was separated from the rest of the building by a wall, which made the corridor and the cells rather dark. Furthermore, the cells enjoyed poor access to natural light, as windows were small and badly placed. There was no yard or exercise space, but on both sides of the corridor there was some space which could easily be used as an exercise yard. **The SPT requests the authorities to confirm whether this new establishment is intended to be used as a prison facility under the DPRS or whether it will be used as a police detention facility, and to indicate what is intended to be its maximum holding capacity.**

219. In the discussions with the Director of DPRS, the SPT was informed, that at the time of the visit, there were more than 900 sentenced prisoners in the Maldives. The SPT was also informed that the country's convicted prison population has increased by 243 per cent from February 2000 to September 2007, and that the authorities were aware that, should the current high levels of punishment for minor drug abuses continue, there would be approximately 2,500 prisoners in three years.

220. The SPT notes the plans for these new facilities to ease the situation in Maafushi prison and allow the closing of the Malé Remand Centre. However, prison building alone will not constitute, and should not be seen, as the sole solution. A coherent strategy to reduce the number of people in prison should include a range of measures other than prison building: increased use of bail, reduction in pretrial periods, inclusion of time served on custodial remand in sentence calculation, increased use of non-custodial sentences, opportunities for remission/release on parole/other forms of release and programmes for re-integration of prisoners into the community and drug rehabilitation programmes so as to reduce the risk of re-offending, inter alia. Furthermore, the SPT is of the view that the legislation concerning sentence maximum requires reconsideration in the light of proportionality (for example up to 25 years or life sentence for minor drug offences) in order to reduce the pressure on the prison system of long sentences for minor drug offences and the resulting overcrowded conditions.

13. Activities and education

221. The delegation noted that there were virtually no activities for prisoners held in the Maafushi prison and in the Malé Remand Centre. In discussions with the authorities, the delegation was informed that this lack of activities was the main reason for the rioting that took place in June 2007.

222. However, the SPT is encouraged by the information provided by the authorities according to which they are intending to introduce certain basic activities such as handicrafts and farming, as well as libraries, gyms and recreational spaces for the well-being of prisoners. Certain educational activity was also being conducted in the Maafushi prison, however, at the time of the visit, it involved less than 10% of prisoners.

223. From the SPT's viewpoint, lack of activities can have serious consequences for the health and well-being of persons deprived of their liberty. Work and education are also important elements in preparing the prisoners for life outside prison. In addition, programmes and activities for prisoners play an important role in ensuring safety of prisoners and staff, and are thus key elements in prevention of ill-treatment. If too many prisoners are left in enforced idleness for long periods, this, like poor conditions, increases the tensions in a custodial institution and counteracts efforts to establish dynamic security through positive relations and activities. **The SPT recommends that the authorities make more concerted efforts to provide programmes and activities, including work and education, for all prisoners.**

14. Outdoor exercise and contact with outside world

224. The SPT has observed that no outdoor exercise was available for prisoners held in units 1 (segregation unit) and 2 (prisoners considered as "dangerous") in Maafushi Prison. Furthermore, at Maafushi, most of the prisoners who had the possibility to use the yard reportedly spent their time in the cells. Staff working in the prison confirmed that prisoners did not go out. The yard of the unit 2 was large and could be an excellent place for exercise but it had not been used for many months. **The SPT recommends that outside exercise is provided for all prisoners including those placed in the segregation unit. Prisoners considered requiring special attention by the staff for security reasons could be taken out to the yard in shifts.**

225. The authorities informed the delegation that the last riots in the Maafushi prison in December 2007 were due to cancellation of family visits. The SPT considers that maintaining contact with the outside world and, in particular, sustaining family and other affective ties is an important element of custodial care and crucial for the eventual re-integration of prisoners into society without re-offending. Moreover, the ability to communicate with family and friends can be a safeguard against ill-treatment, which tends to flourish in closed establishments. **The SPT recommends that rules for visiting times and duration of visits be clear and posted in writing at the entrance of each prison. Disciplinary measures should not include limiting contacts with the outside world.**

15. Health care

226. During the visit, the delegation was informed about the challenges faced by the authorities to provide medical care for prisoners in the Maldives and understood from talks with officials of the Ministry of Health and the Medical Commission for Maafushi that the authorities were working hard to find solutions to these challenges. For example, the delegation was informed that the main aim of the Medical Commission for Maafushi was to improve standards of medical care in prison; as a step toward this aim there are plans to provide prison doctors with guidelines on specific procedures, for example, on screening new arrivals and to build a new hospital for Maafushi prison.

227. At the time of the visit, at Maafushi prison there were two doctors working full-time and one part-time, one x-ray technician, six nurses, one laboratory technician and two pharmacists. The delegation was informed that it was difficult to recruit new staff and to get specialist doctors to come to Maafushi Prison, in particular psychiatrists, psychologists and gynaecologists and female general practitioners to care for the women. Examination and treatment by specialist doctors took place in Male and there were long waiting lists for prisoners to be brought there,

partly because of logistical constraints. However, there were no medical staff working at the Malé Remand Centre, which allegedly caused delays in access to a doctor. Apart from this, it seems that the level of health care offered in prison is equivalent to that of the population in general, and it is free of charge.

228. The SPT welcomes the steps of the authorities to improve standards of medical care in prison and recommends that practical solutions to be put in place through coordinated efforts of the prison authorities and the Ministry of Health. Attention should be paid to providing access to specialists, in particular to psychiatrists, for all prisoners in need of specialized medical treatment.

229. The SPT notes with concern that requests from prisoners, particularly from those held in Unit 1 at Maafushi prison, to see a doctor were collected by prison officers who assessed their appropriateness and thereby filtered requests. Members of the delegation heard allegations from a prisoner that requests to see a doctor, in order to have lesions that were inflicted by officers documented and treated, were turned down by the same group of officers. The doctor of the delegation examined this prisoner and found medical evidence in accordance with the history of ill-treatment that had taken place a few weeks prior to the visit. No medical file for that prisoner existed. The SPT is of the opinion that this example illustrates that the chain of command for prisoners to see a doctor is working in an inappropriate manner. **The SPT strongly recommends that any medical gate-keeping function is taken on by staff with appropriate medical training, e.g. nurses.**

230. Furthermore, the delegation was informed that in the clinic of Maafushi prison, medical interviews and examinations were carried out in the presence of two prison officers, and understood that medical examinations of prisoners from Unit 1 took place in the presence of prison officers, and the prisoner was also held handcuffed. The prison doctors also informed the delegation that they had noticed that patients with physical injuries often refused to tell the origin of the lesions. This may very well be the result of officers being present at the examination. In Maafushi Prison, it also appeared that non-medical staff had access to the medical records of the prisoners.

231. The SPT recommends that the authorities ensure that medical confidentiality is scrupulously respected at all times. The SPT emphasizes that prison officers should stay out of hearing and preferably out of sight of the patient during his/her interaction with the doctor. In exceptional cases, where a doctor so requests, special security arrangements may be considered relevant, such as having a prison officer within call. The doctor should note this assessment in the record together with a description of security measures taken and the names of all persons present. Furthermore, non-medical staff should not be allowed access to the medical records.

232. The delegation found that in some cases, although the prisoner had been examined and treated, the medical record was of poor quality with omission of essential data; in one case no medical record even existed. **The SPT underlines that good record keeping is an essential part of the medical element in the protection of the physical integrity of persons deprived of their liberty. All cases of injuries should be registered, not only in the patient's individual case record, but also in an incident register that should go to the director.**

233. The SPT considers that prisoners in unit 1 are kept under conditions that equal those in a punishment unit; hence, **the SPT recommends that the healthcare staff of the prison should perform daily checks on their health, it being understood that the doctor should act, as always, in the best interests of the health of the prisoner.**

(a) HIV and drug testing in prisons and treatment offered for substance abusers

234. The Medical Committee for Maafushi Prison informed the delegation that routine compulsory testing for HIV or drugs is not done; only three HIV positive prisoners were identified so far in the Maldives. However, there were plans to introduce such testing in the future. **The SPT requests the authorities to provide information concerning the practical modalities of those tests.**

235. The SPT was informed that there were no specific treatment regimes for drug abusers. It was also informed that illegal drugs were abundantly available in the prison. Considering that the vast majority of prisoners were sentenced for drug related crimes, authorities should introduce programmes for treatment and rehabilitation of drug abusers, not only to mitigate individual suffering, but also with a view to reducing the demand for the illegal traffic. Members of the delegation were informed that the United Nations Office on Drugs and Crime, UNODC, is launching programme 71 aimed at drug-prevention policy in prisons, and awareness raising programmes are also envisaged. **The SPT requests the authorities for updated information about the development of these programmes.**

(b) Training of medical staff

236. The delegation was informed that the medical staff have had no training in health issues related to prison, e.g. human rights and medical ethics, public health and hygiene, infectious diseases, epidemics and forensic assessment and description of traumatic lesions. **Considering the difficulties in recruitment and the high turn over of medical doctors of the prison, the SPT recommends that the medical staff, particularly the doctors, should be given refresher courses in relevant topics on a regular basis.** Medical staff did not participate in the oversight of hygiene and quality of food and prison regimes in terms of the impact on health. **The SPT recommends that medical doctors, after appropriate training, should be involved in these responsibilities.**

(c) Psychiatric patients in prison

237. The delegation members interviewed prisoners in Maafushi Prison and in Malé Remand Centre who had longstanding psychiatric conditions, including in the period of offences. The SPT notes that the Maldives do not have mental health legislation and no specialized facility to keep psychiatric offenders. **The SPT recommends that the Maldivian authorities adopt mental health legislation to ensure that deprivation of liberty of persons suffering of psychiatric conditions is given a firm legal basis. If a specialized facility is not established, it should be ensured that all psychiatric offenders serving long term sentences are attended on a regular basis preferably with continuity of care provided by the same psychiatrist.**

16. Allegations of physical ill-treatment and corroborative findings

238. The visiting delegation heard a number of allegations of physical ill-treatment by prison officers, in particular from the prisoners held in unit 1. The nature of the alleged ill-treatment was similar in both establishments visited: punches and kicks by prison officers inflicted upon handcuffed prisoners and fixation of the body in awkward positions with handcuffs for prolonged periods of time. The multiple lesions assessed by the medical members of the delegation were, by their age, shape, and location, found to be in full agreement with the allegations. In addition, the delegation was informed by the female prisoners that on one occasion those female prisoners who complained about lack of work in the Maafushi prison were sent to the so called disciplinary cell, where they were beaten up by male members of the special forces unit and taken handcuffed to the yard where they were forced to kneel for long hours. **The SPT recommends that the authorities remind all prison personnel at all levels that all forms of ill-treatment of persons in their custody are prohibited.**

239. It is axiomatic that, if ill-treatment of prisoners is seen to go unpunished, the confidence of prisoners in the prison system will be eroded and any individual staff members who might consider ill-treating prisoners will feel confident that they can do so with impunity. **In light of State's obligations pursuant to articles 12 and 16 of the Convention against Torture, the SPT recommends that prompt and impartial investigations should be undertaken whenever the authorities receive credible information, from any source, that ill-treatment of persons deprived of their liberty may have occurred, and this even in the absence of a formal complaint.**

17. Complaints procedures and monitoring as a safeguard against ill-treatment

240. As noted in the Chapter IV above, the mandate to examine complaints from prisoners and to monitor prisons lay with the HRCM. Furthermore, in discussions with the Director of the DPRS the delegation was informed that, in addition to the HRCM, prisoners could lodge a complaint with the Head of the DPRS and to the Minister of Home Affairs and the Public Complaints Bureau. However, the investigative activity of the Public Complaints Bureau ended in May 2006.

241. During the interviews, however, many prisoners expressed little trust in the existing complaints mechanisms. They alleged that the investigations did not lead to any result and also feared possible reprisals for lodging a complaint.

242. The SPT considers that one of the basic safeguards against ill-treatment is the right of an imprisoned person or his counsel to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial power.⁴⁰

⁴⁰ See Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173 (9 December 1988), Principle 33.

243. **The SPT recommends that the authorities ensure that there is an effective, confidential and independent complaints and monitoring system in operation. Every request or complaint should be promptly dealt with and replied to without undue delay. The SPT also requests a break-down of statistics on all cases of complaints against prison officers lodged in 2007 as well as information on any disciplinary or other proceedings and any sanctions taken against prison officers on the basis of such complaints.**

C. Youth rehabilitation centres

244. The delegation visited the Maafushi Training Centre for Children and the Children's Home in Vilingili, and would like to commend the respective Ministries for the visible efforts that have been made to provide adequate educational and recreational activities and good material conditions for children held in those institutions. The places were clean, the records well-kept and the atmosphere was agreeable.

1. Maafushi Educational Training Centre for Children

245. This Centre works under the responsibility of the Ministry of Education. It accommodated boys with problems with school or who lack self-control or with behaviour problems. At the time of the visit, there were 34 boys aged between 10 and 18 years and 48 staff members working in shifts.

246. Children were accommodated in rooms measuring around 37m², with six beds in each of the rooms, which were not locked at night. Rooms were clean, workshops well designed and equipped, and there was plenty of space for recreational activities. Toilets were in an acceptable state of repair and cleanliness. The establishment did not look like a place of deprivation of liberty. The members of the delegation interviewed several boys and heard no complaints. **The SPT recommends that these types of centres should be used as a model also when establishing centres for children in conflict with the law.**

247. Children were authorised to have one phone call per month to their parents, without a time limit on that call. Children were also allowed to leave the establishment for holidays with their parents. **The SPT recommends that a number of calls be increased bearing in mind the age of the children placed in that Centre.**

248. The SPT was informed by the Director that, as regards disciplinary punishment, the rules and regulations did not include corporal punishment. If disciplinary measures were needed, children might be punished by the cancellation of their favourite TV programme. Decisions on disciplinary measures were taken by the teachers. **The SPT recommends that all incidents and punishments and other disciplinary measures be systematically recorded in an incident book in a manner allowing proper oversight of use of those measures.**

2. Vilingili children's home

249. This Centre was opened two years ago and is under the responsibility of the Ministry of Gender and Family. It accommodates child victims of abuse, children whose parents were in prison and children who were abandoned in hospital at birth. At the time of the SPT visit there were 38 children, 20 boys and 18 girls. Most of the children were between 2 and 12 years old,

however, the youngest two were under 7 months of age. Children could stay at the home until they finished primary school. Placement at the home was decided by the Ministry, and the Ministry was also informed of the arrival of the child. Children attended school and counsellors worked with children with problems. Children whose parents were in prison could meet them at the Ministry.

250. Children were accommodated in different parts of the building depending on their age and gender. The establishment was clean, nicely furnished and decorated. The children were taken care of by 45 staff members, working in shifts, who seemed to be competent and attentive to the needs of the children. The members of the delegation interviewed several children and heard no complaints. The SPT commends the authorities for having created very good conditions for these children in need of protection.

D. Drug rehabilitation centres

251. At the time of the visit, there were three drug rehabilitation centres in the Maldives: the Drug rehabilitation Centre in Himmafushi, the Addu Atolhu Rehabilitation Centre, and the Feydhoofinolhu Detoxification Centre. The delegation visited the latter establishment.

252. The Feydhoofinolhu detoxification centre had been operating since 2006, and was run by the National Narcotics Control Bureau (NNCB) which was subordinated to the Ministry of Gender and Family in Malé. After a person is arrested by police and illegal drug is detected in urine, the NNCB can issue a resolution by which the person is placed here for three months provided the person agrees to treatment. In the absence of a resolution, the person stays in the hands of police and the case is concluded by court decision. Also persons on whom less than a gram of hashish is found can be placed in this centre. There was one doctor, two nurses and three counsellors as well as six staff members from the NNCB working in the centre. The counsellors provided psychological support. Furthermore, 20 Police officers were responsible for the security in the Centre.

253. At the time of the visit there were 41 persons in the Centre, accommodated in two houses with two dormitories each. Persons placed in the Detoxification centre underwent a special detoxification course, with the assistance of the doctors and counsellors. A counsellor elaborated a report after 90 days of stay and on that basis the NNCB decided whether the person could be released or should stay for another 90 days. The delegation was informed that those who violated the regime of the institution were handed over to the Police and transferred to another facility.

254. Apart from being in an isolated island, the persons held in the centre were allowed to move freely around the compound, and to participate in sport and other activities in the afternoon and go to the beach in the evening. Also education programs were offered, although persons held in the centre complained about the insufficient number of staff to conduct lectures. The persons held there could receive monthly visits, but conjugal visits were not allowed. The delegation heard complaints about the poor quality food and material conditions, and noted that the toilets of the centre were in an unsanitary condition.

IV. COOPERATION

A. Facilitation of the visit

255. In advance of the visit, the Maldivian authorities had designated Ms Luischa Aisath ZAHIR, from the Ministry of Foreign Affairs, to act as liaison officer for the SPT visit. In preparation for the visit, the SPT requested and was provided by the authorities with extensive documentation in English of the legislation relating to deprivation of liberty as well as lists with addresses of places of deprivation of liberty.

256. The SPT wishes to express its appreciation for the good facilitation of the visit by the Maldivian authorities and to thank the liaison officer for her efforts to that end.

B. Access

257. In general, the SPT had no problems of access to places it decided to visit. The generally rapid access to such places indicates that the relevant authorities were informed in advance about the SPT's visit and the powers of access granted under the Optional Protocol. The staff in the locations visited were cooperative, and in those rare instances where they expressed doubts about the SPT's mandate to have access to some materials, the issues were swiftly resolved. The SPT welcomes the efforts made to disseminate information to those whose work intersects with the mandate of the SPT.

C. Interviews in private

258. The SPT notes with satisfaction that it was given unrestricted access to have private interviews with the persons deprived of their liberty without witnesses, as well as with any other person whom the delegation considered able to supply relevant information, in accordance with article 14, paragraph (1) d of OPCAT.

259. In view of the obligation under article 15 of the OPCAT, the SPT notes with satisfaction that it has not received allegations of reprisals after the visit. The SPT encourages the authorities to remain vigilant so as to prevent any such occurrences.

D. Dialogue with and feedback/responses of the authorities

260. The many meetings with officials were very helpful in understanding the framework of the system of deprivation and liberty. The SPT wishes to thank the Ministries and institutions for the valuable information provided.

261. At the end of the visit the delegation presented its preliminary observations to the Maldivian authorities in confidence. The SPT also transmitted to the Maldivian authorities a copy of the preliminary observations. The SPT is grateful to the authorities for the spirit in which the delegation's observations were received and the constructive discussion about ways forward.

262. In addition, the SPT wrote to the authorities on 3 March 2008 requesting updated information on any steps taken since the visit on certain issues which could be or were due to be addressed in the period following the visit. The SPT is still waiting for the Government's reply to some of the issues raised in the note.

263. The SPT acknowledges the receipt of the note verbale dated 22 June where the Government of the Maldives thanked the SPT for the copy of the preliminary observations⁴¹ and provided it with updated information on some of the issues raised. The SPT has considered these replies and included clarifications on a number of issues in this report. The SPT would also like to thank the Permanent Mission of the Republic of Maldives to the United Nations Office at Geneva for providing it with the English translation of the new Constitution.

264. The SPT requests the Maldivian authorities to provide within six months a full written response to this visit report and in particular to the conclusions, recommendations and requests for further information contained therein. This six months period allows time for at least some of the steps planned or in the process of implementation to be realized in practice and for the programme of longer term action to be initiated.

265. The SPT looks forward to continuing cooperation with the Maldivian authorities in the shared commitment to improving the safeguards for prevention of all forms of ill-treatment of people deprived of liberty.

V. SUMMARY OF RECOMMENDATIONS AND REQUESTS FOR INFORMATION

A. Legal and institutional framework

266. The SPT recommends that the Maldives, in order to ensure the best possible protection against ill-treatment, continue to review and strengthen its efforts to ensure that all domestic laws as well as administrative regulations conform to the provisions and principles of the international human rights instruments and standards. When incorporating international legal obligations, authorities should have regard to the language of the international legal instruments.

267. The SPT requests to be kept informed on the process of adoption of these new Bills [new Penal Code, Sentencing Bill, Criminal Procedure Code, Bill of Evidence, Police Bill, National Security Bill, Detention Procedures Bill and Parole Bill] and their entry into force. It also requests a copy of the adopted versions of the above-mentioned Bills.

268. In line with the general comment No. 2 of the Committee against Torture, the SPT recommends that the Maldives make the offence of torture punishable as an offence under its criminal law as well as provide for appropriate redress for the victims of torture and/or ill-treatment. The wording of such a provision should contain, at a minimum, the elements of torture as defined in article 1 of the Convention against Torture, and the requirements set out in article 4. Furthermore, in SPT's view, the conditions that give rise to ill-treatment frequently facilitate torture; therefore the measures required to prevent torture must be applied also to prevent ill-treatment.

⁴¹ Referred to as the report of the SPT.

269. The SPT recommends that the Government of Maldives prohibit all types of corporal punishment, including flogging irrespective of whether inflicted with the purpose to cause pain or humiliation, as a sentence for crime and for disciplinary purposes.

270. The SPT recommends that the authorities of the Maldives ensure that, in all decisions taken within the context of the administration of juvenile justice and in all plans to review the relevant legislation, the best interests of the child are given primary consideration. This includes the first contact with the police, the possible stay in police custody and in pretrial detention and the stay in a prison or other facility for children that they are not free to leave at will.

271. The SPT requests the authorities to clarify whether the Human Rights Commission Act has entered into force, and if not, to provide information on the planned time-table for its entry into force.

272. The SPT request the authorities to provide information on the exact scope of the visiting mandate of the HRCM and specify whether it covers also police holding facilities. The SPT also requests information on the number of visits carried out in the course of the year 2008 and planned for the year 2009, the establishments visited, and possible proposals made by the Commission to amend existing laws or regulations regarding safeguards against ill-treatment.

273. The SPT invites the authorities to review the mandate and the terms of reference of the Jail Oversight Committee with a view of establishing it as an independent complaints and monitoring body for prisons.

274. The SPT requests information on the manner in which the assessment of the veracity of the allegations was made [by the Public Complaints Bureau], as well as copies of the records of the medical examinations carried out to assess the allegations, in the above-mentioned 57 cases involving allegations of torture or ill-treatment.

275. The SPT requests details of the legislative and operational provisions to ensure the independence of the Police Integrity Commission, and information on its investigative capacity as well as the staff and financial resources made available to it. The SPT also requests to be informed about when the Commission has started to work. Furthermore, the SPT requests to be informed of the outcome of the examination of the 35 unfinished cases transferred from the Public Complaints Bureau to the Commission.

276. The SPT welcomes this new provision [Article 220 of the new Constitution providing for establishment of the post of Prosecutor General of the Maldives] and requests information on any plans to carry out the monitoring work in practice.

277. The SPT welcomes the new constitutional provision on legal aid assistance. The SPT requests information on any possible legislative changes this new constitutional provision will bring, the definition of a “serious offence”, and the time a person may be held in custody before being formally accused of an offence. In addition, the SPT requests information on the plans and time frame to establish this system, including necessary structures, to ensure its effective functioning also in practice, and a copy of any new legislation once adopted.

278. The SPT recommends extension of the system to cover all persons deprived of liberty who cannot, due to financial or other reasons, benefit from the assistance of a private lawyer, and that from as early a stage of the deprivation of liberty as possible, preferably from the outset.

B. NPM

279. The SPT requests information on the budgetary and human resources made available to the HRCM to effectively carry out its functions as NPM, including a breakdown of the budgetary resources allocated for it to carry out the work as NPM.

280. The SPT appreciates that the State of the Maldives has initiated the process of establishing the national preventive mechanism and calls upon the State to continue with the process of consolidating and institutionalizing it. For these purposes, it reaffirms the [following] guidelines addressed to the State in order to guarantee the optimum development of this mechanism, as well as directed at the national mechanism so that a comprehensive and complementary plan may be put in place allowing the NPM to accomplish its functions for the prevention of torture.

C. Police

281. The SPT recommends that the relevant authorities ensure the due application of this new procedure laid down in article 48 (d) of the Constitution.

282. The SPT requests the authorities to provide a detailed description of the decision-making procedure regarding placement of a person in police detention, continuation of the detention, and remand custody, reflecting the changes brought about by the introduction of the new procedure laid down in article 48 (d) of the Constitution. This description should include, in particular, information on the authorities deciding on custody and its continuation, time limits for these decisions and references to relevant laws and/or regulations.

283. The SPT recommends that the initial police custody period be of shortest possible duration and that thereafter remand custody should occur in facilities under the responsibility of the Department of Penitentiary and Rehabilitation Services (DPRS) and not the police. The SPT also recommends that the relevant authorities ensure that no pressure is exerted over the persons held in detention for investigative or any other purposes.

284. The SPT requests the Government to provide information on any new developments in this respect [the separation of the custodial and investigation functions of the police].

285. The SPT recommends that the Maldivian authorities review the system of release on bail so the authority that is responsible for investigating the crime does not also decide upon bail. The SPT requests information on whether the new procedure laid down in article 48 (d) of the new Constitution will bring any changes to the procedure regarding pretrial remand in custody and bail and, if so, asks to receive information on those changes.

286. In order to make the release on bail a real possibility in practice, the SPT recommends that the amount of the surety should be in line with the financial means of the detainee concerned. The SPT requests information on number of requests be released on bail submitted in 2007 and first half of 2008, and the number of persons granted bail.

287. The SPT requests information on whether the Regulation Governing the Application to a Judge for the Arrest or Detention of Persons Suspected of Committing an Offence for a Further Period than Approved by the Committee will be amended or repealed due to entry into force of the new Constitution. In the absence of a maximum time limit for detention, the SPT recommends that the decision to continue the detention should be reviewed by the court at regular intervals.

288. The SPT recommends that detainees should not only be present in the court hearing regarding detention and its continuation, but that the court should afford them an opportunity to speak and to report any ill-treatment. It should always be open to the court to make a referral for medical examination if there are reasons to believe that ill-treatment may have occurred, and to take steps to ensure that any allegations of ill-treatment are promptly investigated by a competent body.

289. The SPT recommends that the relevant authorities take the necessary steps to ensure the scrupulous application of the new constitutional provision enshrined in article 52. The SPT requests information on the status of the Rules of Criminal Procedure and whether they include the prohibition of the use of torture or ill-treatment in police investigations. The SPT also recommends that police training in investigative methods emphasise the need to proceed from the evidence to the suspect rather than the reverse. The SPT also recommends that before persons deprived of liberty sign a statement to the police, they should be given a copy of the statement and have it read out or have the opportunity to read it.

290. The SPT recommends that the relevant legislation be amended to reflect the new Constitution and to spell out, in detail, all the rights of persons deprived of liberty, as well as the right of such persons to be notified of their rights as from the moment of deprivation of liberty and the concomitant obligation of law enforcement officers to ensure such notification and to assist in the exercise of all such rights as from the very outset of deprivation of liberty.

291. The SPT also recommends that a standard notice listing all the rights of persons deprived of liberty should be produced in the languages spoken by detained persons and posted in places of deprivation of liberty where they can be read easily by persons in custody. In addition, the same information should be contained in the form to be signed by each person in custody, and the detainee should be given a copy of that form.

292. The SPT recommends that the relevant authorities ensure that the right to notify a family member or other relevant person of the deprivation of liberty within 24 hours is effectively implemented also in practice. The SPT further recommends that detainees should be systematically informed about this right and asked to sign a standard form on rights, indicating the person they wish to notify. Police personnel should be instructed to inform detainees of this right and to implement the right by notifying the person indicated.

293. The SPT recommends that the authorities ensure that all persons deprived of their liberty are entitled to benefit from the assistance of a lawyer as from the outset of deprivation of liberty. They should be systematically informed about this right by the police and be provided with reasonable facilities to consult a lawyer in private. Furthermore, if a detainee does not have a lawyer of his/her own choice, he/she should be entitled to have one assigned to him/her, and benefit from free legal assistance if he/she does not have sufficient means to pay.

294. The SPT recommends that the authorities introduce systematic medical examination of all persons in police custody and that these examinations are carried out without using any restraints measures. The SPT also recommends that medical examinations be conducted in accordance with the principle of medical confidentiality; non-medical persons, other than the patient, should not be present. In exceptional cases, where a doctor so requests, special security arrangements may be considered relevant, such as having a police officer within call. The doctor should note this assessment in the records, as well as the names of all persons present. However, police officers should always stay out of hearing and preferably out of sight of a medical examination.

295. The SPT recommends that every routine medical examinations is carried out using a standard form that includes (a) a medical history (b) an account by the person examined of any violence (c) the result of the thorough physical examination, including a description of any injuries and (d) where the doctor's training so allows, an assessment as to consistency between the three first items. The medical record should, upon request from the detainee, be made available to him/her or to his/her lawyer.

296. Further to the request for the death certificate made in the note verbale dated 3 March 2008, the SPT requests a copy of the autopsy report of Mr. Solah.

297. The SPT recommends that the Maldives Police Service develop a standardised and unified record for registering contemporaneously and comprehensively all key information about an individual's deprivation of liberty and that police staff be trained to use this appropriately and consistently. The SPT recommends that the records should include at least the following information:

- (a) The reasons for the deprivation of liberty, the exact time when it started and how long it lasted;
- (b) Person responsible for authorization of the deprivation of the liberty and person making the entry in the register;
- (c) Precise information about where the person was held during that period, including any movements within and between establishments;
- (d) When the person first appeared before a judicial or other authority;
- (e) Requests and complaints;
- (f) Time when the person was informed about his/her rights, time of notification of custody, the identity of the notified person as well as the officer who made the notification;
- (g) Time when the person was seen by a doctor or received a visit from a family member, lawyer or other person.

298. Furthermore, the SPT recommends that, in order to ensure systematic recording of all relevant information, supervising officers should exercise strict oversight of record keeping.

299. The SPT requests the Maldivian authorities to provide further information on the mandate and powers of the internal investigation department and the Police Disciplinary Board, the number and type of complaints lodged during the years 2007-2008 and the outcome of these investigations. The SPT also requests information as to whether there are any other bodies or offices vested with powers to examine complaints made against police, and if so, about their mandates, the number of cases examined in 2007 and 2008 and the outcome of the examination.

300. The SPT recommends that the right of detainees to lodge a complaint is clearly established in law and that detainees are fully informed about this right by the police officers and/or staff working in the police detention facilities. In this connection the SPT wishes to emphasize the duty of the Maldivian authorities to ensure that there are no reprisals as a result of lodging a complaint.

301. The SPT recommends that the authorities ensure that the detainees have the possibility to lodge a complaint in practice, and that the principle of confidentiality of complaints is duly respected. Police officers or staff working in detention centres should not interfere with the complaints process, filter the complaints addressed to competent authorities or have access to the content of the complaints. The SPT recommends drawing up rules for use by the police officers regarding handling of complaints, which should include modalities concerning referral of the complaint to the competent authorities, the obligation to respect the anonymity of the complainant, and the duty to make available writing materials and envelopes for detainees wishing to lodge a complaint.

302. The SPT recommends that the Maldivian authorities examine the possibility to establish such an information system [containing information on the type of the complaints lodged and the outcome of the investigations and possible sanctions imposed].

303. The SPT recommends that the police officers and other staff members working in the police stations and police detention facilities are provided with adequate training for work in custodial settings.

304. The SPT recommends that the authorities ensure effective oversight and supervision of the work of police officers by senior officials and superior authorities.

305. The SPT recommends that the relevant authorities ensure that the responsibility of any superior officials, whether for direct instigation or encouragement of torture or ill-treatment or for consent or acquiescence therein, be fully investigated through competent, independent and impartial prosecutorial and judicial authorities.

306. The SPT recommends that, as a means of preventing cases of torture and ill-treatment, interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest or detention should be kept under systematic review.

307. The SPT recommends that the authorities ensure that a parent or other guardian be present every time a child is questioned by the police and that children enjoy unrestricted access to a lawyer. The SPT further recommends that children should always be held separately from adult detainees, preferably in separate institutions; and that holding facilities for children should fulfil adequate hygiene standards and provide possibilities for outdoor exercise; and that staff working in these facilities should be provided with adequate training to work with underage detainees.

308. The SPT requests to be informed of the opening of a separate detention facility to accommodate children in conflict with the law.

309. The SPT underlines that a forensic medical examination must always have a clear legal basis, and that examination of minors should always be safeguarded by the presence of parents or other guardian, unless a minor clearly expresses the contrary. The medical report on such an examination should include the legal basis, all persons present in the examination and whether any force was used during the examination, and if so, its nature and the reason for using it.

310. The SPT considers that the practice of holding detainees handcuffed all day and night constitutes inhuman and degrading treatment. The SPT recommends that this practice should cease forthwith. Furthermore, the SPT is of the view that the yard is not a suitable place to accommodate detainees, in particular women.

311. The SPT recommends that every detainee held in the custodial facilities of police stations or in police detention centres should be provided with sleeping accommodation meeting all requirements for health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lightning, heating and ventilation, as well as a mattress to sleep on and access to sanitation, food and drinking water. Care should be taken to prevent water entering to cells during the rain, and insects and rodents entering the cells. Anyone held for more than twenty-four hours should be offered outdoor exercise every day.

312. The SPT recommends that untried detainees should be kept separated from convicted prisoners.

313. The SPT recommends that, since there are no staff members present in police facilities with the medical qualifications necessary to assess the health needs of persons deprived of liberty, requests for access to a doctor must be granted without delay and without prior filtering by police officers.

314. The SPT recommends that requests from detainees to see a doctor should not be filtered by non-medical staff. Police officers should have training and instructions in how to deal with medical emergencies, even without the existence of an explicit request from detainees for medical intervention. Prisoners in obvious need of medical attention, e.g. having fits, should be transferred for medical treatment without delay.

315. The SPT recommends that individual files should be opened for every detainee upon arrival at police detention centres and be updated systematically and comprehensively after every medical examination or intervention and that clear instructions are established for the doctors on how to document and to report possible cases of torture or ill-treatment.

316. The SPT recommends that immediate measures are taken to establish and maintain confidentiality in the keeping of medical documents and records.

317. The sparse availability of specialist resources underlines the need for some basic training of officers in the identification of serious mental conditions and clear guidelines for referring such detainees to a medical facility.

318. The SPT recommends that the authorities take steps to ensure that there are adequate safeguards in place to prevent torture and ill-treatment. Furthermore the SPT recommends that all allegations of ill-treatment be fully investigated through competent, independent and impartial authorities.

D. Prisons

319. The SPT requests to be informed on the opening of this prison for children. Furthermore, the SPT requests detailed information on the facilities for boys and girls in the establishment.

320. The SPT requests information on whether, with the reform of the criminal justice system, the Governments has planned to introduce any changes in the policy relating to the inclusion of time spent on remand in sentence calculation.

321. The SPT notes this positive development [opening of a separate secure prison called “Women’s Jail”] and recommends that the authorities ensure that the whole of the premises allocated for women is entirely separate from those allocated for men. Furthermore, it is necessary to ensure an adequate level of female staffing in those premises day and night.

322. The SPT recommends a more frequent presence of a female doctor in the Maafushi prison to ensure access of female prisoners to a doctor when their health condition so requires.

323. The SPT recommends that the relevant authorities ensure that prisoners and detainees of foreign nationality are treated without discrimination and that all basic safeguards apply equally to this category of persons.

324. The SPT requests information on any steps taken to resolve the situation and to transfer the person concerned to his home country, as well as of any compensation awarded to him by the Maldivian authorities.

325. The SPT recommends that medical screening of all prisoners should take place upon arrival. If the initial screening is performed by a nurse, the detainees should be offered the opportunity to be seen by a doctor as soon as possible. The medical examination should be thorough enough to reveal any injuries. The SPT further recommends that every routine medical examination is carried out using a standard form that includes (a) a medical history (b) an account by the person examined of any violence (c) the result of the thorough physical examination, including description of any injuries and (d) where the doctor’s training so allows, an assessment as to consistency between the three first items. The report should be made available to the prisoner and to his or her lawyer.

326. The SPT further recommends that a procedure be established, with due consideration for medical confidentiality and the consent of the individual, for all cases of violence and alleged ill-treatment documented by doctors to be reported directly to the prison director for referral to the bodies responsible for monitoring of conditions in police detention facilities or in prisons and for complaints.

327. The SPT welcomes this important on-going process of recruitment and training of new staff and encourages the relevant authorities to continue their efforts to train staff.

328. The SPT recommends that the authorities ensure adequate levels of staffing at all times, including female staff in facilities holding women.

329. The SPT recommends that the training of prison staff focus on building and maintaining positive relations among prisoners, as well as between staff and prisoners: the dynamic security approach to prison work.

330. The SPT recommends that all incidents and punishments and other disciplinary measures be systematically recorded in the incident book in a manner allowing proper oversight of use of those measures.

331. The SPT encourages the Maldivian Government to adopt the draft Prison Rules and trusts that the Government will ensure that they conform to the international standards on treatment of prisoners binding upon Maldives. The SPT further recommends that the authorities ensure that no collective punishments are used. Prison managers should increase oversight of incidents and the disciplinary process to ensure that no punishments other than those provided for in law are imposed or other than by the formal disciplinary process. All occurrences giving rise to disciplinary proceedings and all disciplinary punishments should be carefully recorded in special registers, and subject to independent monitoring.

332. The SPT recommends that the placement of prisoners in Unit 1 be subject to appeal. The SPT also recommends that the situation of anyone under isolation or other extreme restrictions be reviewed regularly with a view to moving them progressively to less restrictive custody.

333. The SPT recommends that the authorities put in place a proactive strategy for effective management of prison institutions to address the roots causes of the incidents, to replace the existing reactive approach. The SPT considers that such measures should include, among others, organizing work and other activities for prisoners. The SPT further recommends that managers should be seen daily in the prisons and go among staff and prisoners, exercising direct supervision of staff and checking what is happening in all areas of the prisons. Managers should lead by example and promote dynamic security, with a view to increasing safety for all and preventing ill-treatment.

334. The SPT recommends that a specific register be introduced and maintained, where all incidents involving use of force would be systematically recorded. These records should include, at least, the following: date and nature of the incident, nature of restraint or force, duration, reasons, persons involved and authorization of the use of force.

335. The SPT recommends that the practice of using handcuffing as a means of punishment be eliminated immediately.
336. The SPT recommends a thorough review of special interventions in response to prison incidents. The review should include: rotating staff deployed in that function; providing training in the use of force in conformity with human rights principles; increasing oversight by prison managers of prison incidents; strictly regulated deployment of staff for interventions; and introducing independent monitoring of the resort to, and the operation of, such intervention.
337. The SPT recommends that all prisoners, including those held in segregation, are provided with appropriate bedding with mattresses, which, if necessary, are made of special indestructible material suitable for use in prisons. The SPT further recommends that proper sanitary facilities should be made available for persons held in that unit.
338. The SPT requests to be informed of the closing of the Malé Remand Centre.
339. The SPT recommends that these design flaws [of the new prison in Malé] be addressed before opening of the prison and requests to be informed of its opening.
340. The SPT requests the authorities to confirm whether this new establishment is intended to be used as a prison facility under the DPRS or whether it will be used as a police detention facility, and to indicate what is intended to be its maximum holding capacity.
341. The SPT recommends that the authorities make more concerted efforts to provide programmes and activities, including work and education, for all prisoners.
342. The SPT recommends that outside exercise is provided for all prisoners including those placed in the segregation unit. Prisoners considered requiring special attention by the staff for security reasons could be taken out to the yard in shifts.
343. The SPT recommends that rules for visiting times and duration of visits be clear and posted in writing at the entrance of each prison. Disciplinary measures should not include limiting contacts with the outside world.
344. The SPT welcomes the steps of the authorities to improve standards of medical care in prison and recommends that practical solutions to be put in place through coordinated efforts of the prison authorities and the Ministry of Health. Attention should be paid to providing access to specialists, in particular to psychiatrists, for all prisoners in need of specialized medical treatment.
345. The SPT strongly recommends that any medical gate-keeping function is taken on by staff with appropriate medical training, e.g. nurses.
346. The SPT recommends that the authorities ensure that medical confidentiality is scrupulously respected at all times. The SPT emphasizes that prison officers should stay out of hearing and preferably out of sight of the patient during his/her interaction with the doctor. In exceptional cases, where a doctor so requests, special security arrangements may be considered

relevant, such as having a prison officer within call. The doctor should note this assessment in the record together with a description of security measures taken and the names of all persons present. Furthermore, non-medical staff should not be allowed access to the medical records.

347. The SPT underlines that good record keeping is an essential part of the medical element in the protection of the physical integrity of persons deprived of their liberty. All cases of injuries should be registered, not only in the patient's individual case record, but also in an incident register that should go to the director.

348. The SPT recommends that the healthcare staff of the prison should perform daily checks on their health, it being understood that the doctor should act, as always, in the best interests of the health of the prisoner.

349. The SPT requests the authorities to provide information concerning the practical modalities of those tests [HIV and drug tests].

350. The SPT requests the authorities for updated information about the development of these programmes [drug treatment].

351. Considering the difficulties in recruitment and the high turn over of medical doctors of the prison, the SPT recommends that the medical staff, particularly the doctors, should be given refresher courses in relevant topics on a regular basis.

352. The SPT recommends that medical doctors, after appropriate training, should be involved in these responsibilities.

353. The SPT recommends that the Maldivian authorities adopt mental health legislation to ensure that deprivation of liberty of persons suffering of psychiatric conditions is given a firm legal basis. If a specialized facility is not established, it should be ensured that all psychiatric offenders serving long term sentences are attended on a regular basis preferably with continuity of care provided by the same psychiatrist.

354. The SPT recommends that the authorities remind all prison personnel at all levels that all forms of ill-treatment of persons in their custody are prohibited.

355. In light of State's obligations pursuant to articles 12 and 16 of the Convention against Torture, the SPT recommends that prompt and impartial investigations should be undertaken whenever the authorities receive credible information, from any source, that ill-treatment of persons deprived of their liberty may have occurred, and this even in the absence of a formal complaint.

356. The SPT recommends that the authorities ensure that there is an effective, confidential and independent complaints and monitoring system in operation. Every request or complaint should be promptly dealt with and replied to without undue delay. The SPT also requests a break-down of statistics on all cases of complaints against prison officers lodged in 2007 as well as information on any disciplinary or other proceedings and any sanctions taken against prison officers on the basis of such complaints.

E. Youth rehabilitation centres

357. The SPT recommends that these types of centres (as Maafushi Educational Training Centre for Children) should be used as a model also when establishing centres for children in conflict with the law.

358. The SPT recommends that a number of calls be increased bearing in mind the age of the children placed in that Centre.

359. The SPT recommends that all incidents and punishments and other disciplinary measures be systematically recorded in an incident book in a manner allowing proper oversight of use of those measures.

F. Cooperation

360. The SPT requests the Maldivian authorities to provide within six months a full written response to this visit report and in particular to the conclusions, recommendations and requests for further information contained therein. This six months period allows time for at least some of the steps planned or in the process of implementation to be realized in practice and for the programme of longer term action to be initiated.

Annex I

LIST OF PLACES OF DEPRIVATION OF LIBERTY VISITED BY THE SPT

A. Police facilities

1. Police detention centres

Malé Custodial (Atholhuvehi Detention Centre)

Dhoonidhoo Detention Centre

2. Police stations

Malé Police headquarters (Hussein Adam building)

Maafanu Police station

Vilingili Police station

Addu Atholhu Police station

Fuvamulah (Fuahmulaku) Police station

Hulhumeedhoo Police station

Kulhudhufushi Police station

Hoarafushi Police station

Ha. Dhidhdoo Police station

Hithadhoo Police station

B. Penitentiary service

Maafushi prison

Malé prison (Malé remand centre)

Malé new prison building

Hithadhoo new prison building

C. Other institutions

Maafushi education and training centre for children

Vilingili children's home

Feydhoofinolhu detoxification centre

Girifushi National Security Service training centre

Annex II

LIST OF GOVERNMENTAL OFFICIALS AND OTHER ORGANISATIONS AND PERSONS WITH WHOM THE DELEGATION MET

A. National authorities

1. Ministry for Foreign Affairs

Ms. Dunya Maumoon	Deputy Minister of Foreign Affairs
Mr. Ali Hussein Didi	Ambassador
Mr. Ali Naseer Mohamed	Director General
Ms. Aishath Liusha Zahir,	Maldives Focal Point

2. Ministry of Home Affairs

Mr. Abdullah Kamaludheen	Minister of Home Affairs
Mr. Abdullah Waheed	Deputy Minister of Home Affairs

3. Ministry of Justice

Mr. Mohamed Muizz Adran	Minister of Justice
Ms. Aisha Shiyune Muhammed	Civil and Court Judge
Mr. Ghaniya Abdul Ghafoor	Assistant Legal Officer
Mr. Mubuthaz Mushin	Assistant Legal Officer

4. Ministry of Gender and Family

Ms. Aishath Mohamed Didi	Minister of Gender and Family
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5. Ministry of Legal Reform, Information & Arts

Mr. Mohamed Anil	Commissioner of Legal Reform
Ms. Lubna Zahir Hussein	Executive Director

6. Ministry of Health

Ms. Sheena Mosa	Director General of Health Services
Mr. Abdullah Baniyameen	Clinical Programme

7. Ministry of Education and Social Security

Mr. Mohameed Bakul	
Three other representatives of the Ministry	

8. Attorney General's Office

Ms. Aishath Azima Shakoor Attorney General

Mr. Hussein Shameen Assistant State Attorney

9. National Human Rights Commission of the Maldives (NHRC)

Mr. Ahmed Saleem President of the NHRC

Mr. Mohamed Zaheed Vice-President of the NHRC

Mr. Ali Nashath Hameed Director of the Complaints Department of the NHRC

10. Police Headquarters

Mr. Adam Zahir Commissioner of Police

Mr. Abulla Riyan Deputy Commissioner of Police

Mr. Hussein Waheed Chief Inspector of Police

Mr. Ismail Naveen Sub-Inspector of Police

Mr. Mohamed Jinah Sub-Inspector of Police

Mr. Abdulla Navar Sub-Inspector of Police

Mr. Ahmed Faisal Sub-Inspector of Police

11. Department of Penitentiary and Rehabilitation Services, DPRS

Mr. Ahmed Shihan, Director General of DPRS

Mr. Hussein Rasheed Yoosuf, Inspector general of Correctional Services

B. United Nations Development Programme

Mr. Patrice Coeur-Bizot (UN Resident Coordinator)

Mr. Laurent Meillan (UN Human Rights Advisor)

C. Non-governmental organisations

Detainee Network

Journey and Women Association against Drugs
