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## الجمعية العامة



## مجلس حقوق الإنسان

## الدورة الحادية والخمسون

12 أيلول/سبتمبر - 7 تشرين الأول/أكتوبر 2022

البند 3 من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية

والاجتماعية والثقافية، بما في ذلك الحق في التنمية

## زيارة إلى ملديف

## تقرير الفريق العامل المعني بالاحتجاز التعسفي\*

موجز

زار الفريق العامل المعني بالاحتجاز التعسفي ملديف في الفترة من 29 تشرين الثاني/نوفمبر إلى 9 كانون الأول/ديسمبر 2021 بناء على دعوة من الحكومة. ووقف الفريق العامل على تطورات إيجابية، منها: التصديق على صكوك دولية لحقوق الإنسان؛ وعمل لجنة حقوق الإنسان، بما في ذلك ولايتها بوصفها الآلية الوقائية الوطنية لملديف، ومجموعة من الهيئات الأخرى المكلفة بإجراء رقابة منتظمة على أماكن سلب الحرية؛ وإصلاح دائرة شرطة ملديف؛ وتنظيم مجلس نقابة المحامين في ملديف للمهنة القانونية تنظيمياً ذاتياً؛ ومبادرات التصدي لانتهاكات حقوق الإنسان التي ارتكبت في الماضي؛ والتعاون مع الآليات الدولية لحقوق الإنسان؛ وإجراء جلسات المحكمة عن بعد. وفي نفس الوقت، لاحظ الفريق العامل وجود تحديات في نظام العدالة الجنائية، مثل كثرة الأشخاص المحتجزين والطول المفرط لفترات الاحتجاز السابق للمحاكمة، وصعوبات في إعمال الحق في الحصول على المساعدة القانونية، وتأخيرات لا مبرر لها في الإجراءات الجنائية. ولاحظ الفريق العامل أيضاً اكتظاظاً في معظم أماكن الاحتجاز. كما لاحظ اتباع نهج عقابي إزاء جرائم المخدرات، أدى إلى سجن العديد من الأشخاص الذين كان من الممكن أن يتلقوا علاجاً أكثر فعالية في البرامج المجتمعية الطوعية. وأعرب الفريق العامل أيضاً عن قلقه إزاء الاحتجاز بوصفه جزءاً من تدابير مكافحة الإرهاب. وفي سياق الهجرة، لاحظ الفريق العامل محدودية حقوق العمال المهاجرين المحتجزين، بما في ذلك حقهم في الوصول إلى العدالة. وأخيراً، خلص الفريق العامل إلى أن الإطار القانوني الحالي المنطبق على الدخول غير الطوعي إلى مرافق الصحة العقلية مفتقر إلى الدقة وأن توفير الرعاية للأشخاص ذوي الإعاقات النفسية الاجتماعية والمسنين والأطفال ينقصه التمويل ويتطلب موظفين فنيين إضافيين على وجه الاستعجال. ويشجع الفريق العامل ملديف، ضمن توصياته، على الانضمام إلى عدد من صكوك حقوق الإنسان واعتماد ممارسات محددة توفر حماية أكبر من الاحتجاز التعسفي.

\* يعمم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، المرفق بهذا الموجز، فيعمم باللغة التي قُدِّم بها فقط.



## Annex

### Report of the Working Group on Arbitrary Detention on its visit to Maldives

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## **I. Introduction**

1. At the invitation of the Government of Maldives, the Working Group on Arbitrary Detention conducted an official visit to the country from 29 November to 9 December 2021. The Working Group was represented by Elina Steinerte (Latvia, Chair-Rapporteur), Leigh Toomey (Australia) and Priya Gopalan (Malaysia) and was accompanied by staff from the Office of the United Nations High Commissioner for Human Rights (OHCHR).
2. The Working Group extends its gratitude to the Government of Maldives for inviting it to undertake its first visit to the country and for its cooperation. The Working Group met with officials of the following ministries: Foreign Affairs; Home Affairs; Health; and Gender, Family and Social Services. The Working Group also met with representatives of the Supreme Court, the Attorney General's Office, the Prosecutor General's Office, the Maldives Police Service, the Maldives Correctional Service, the Judicial Service Commission, Maldives Immigration, the National Drug Agency, the Human Rights Commission, the National Integrity Commission, the Presidential Commission on the Investigation of Murders and Enforced Disappearances and the Human Rights and Gender Committee of the People's Majlis (parliament).
3. The Working Group visited 14 places of deprivation of liberty in Male', Maafushi, Hulhumale', Himmafushi, Guraidhoo, Hithadhoo and Addu, including police custodial facilities, immigration detention centres, prisons, drug treatment and rehabilitation centres, and facilities for children, older persons and persons with disabilities (see appendix). It was able to carry out confidential interviews with over 85 persons deprived of their liberty.
4. The Working Group wishes to thank the United Nations country team, the Resident Coordinator and their staff for supporting the visit. It also recognizes the numerous stakeholders who shared their perspectives on the arbitrary deprivation of liberty, including representatives from civil society and the legal profession, and extends its gratitude to them for their generous assistance.
5. The Working Group shared its preliminary findings on 9 December 2021. It intends to continue its constructive dialogue with the Government on the issues discussed in the present report.

## **II. Overview of the institutional and legal framework**

### **A. International human rights obligations**

6. Maldives is party to major international human rights instruments, including: the International Covenant on Civil and Political Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the Convention on the Elimination of All Forms of Discrimination against Women; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol; the Convention on the Rights of the Child and its three Optional Protocols; and the Convention on the Rights of Persons with Disabilities.
7. Maldives is not a State party to: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention relating to the Status of Refugees and its 1967 Protocol; the Convention relating to the Status of Stateless Persons; the Convention on the Reduction of Statelessness; the Optional Protocol to the Convention on the Rights of Persons with Disabilities; or the second optional protocol to the International Covenant on Civil and Political Rights.
8. Maldives has participated in three cycles of the universal periodic review, in 2010, 2015 and 2020.

## **B. National legal framework**

### **1. Constitutional protections**

9. The current Constitution was adopted in 2008, replacing and repealing the Constitution of 1998. Article 68 of the Constitution states that international treaties to which Maldives is a party shall be considered when interpreting and applying the rights and freedoms of the Constitution. Article 10 (b) highlights that no law contrary to any tenet of Islam shall be enacted in the country.

10. Chapter two of the Constitution, entitled “Fundamental Rights and Freedoms”, includes article 20 on equality before the law, article 21 on the right to life, liberty and security of the person, and article 45 on the right not to be arbitrarily detained, arrested or imprisoned.

11. Furthermore, the Constitution provides for procedural guarantees on arrest and detention (art. 48) and the right to retain and instruct legal counsel (art. 53). Article 48 (d) of the Constitution establishes the right of a detained person to be brought before a judge within 24 hours.

12. The freedoms of expression and peaceful assembly are covered in articles 27 and 32, respectively. Due process rights, including the right to a fair and public hearing, to be informed without delay of the specific offence, to be tried within a reasonable time, not to be compelled to testify, to have adequate time and facilities for the preparation of defence, to be tried in person, to examine witnesses, to be presumed innocent until proven guilty, to appeal, and to be compensated for detention without legal authority or justification, are provided for in articles 42, 51, 56 and 58. According to article 52, no confession shall be admissible in evidence unless made in court by an accused who is in a sound state of mind. Finally, article 16 of the Constitution allows for the limitation of rights and freedoms under specified circumstances.

### **2. Criminal Procedure Act, Penal Code and Prison and Parole Act**

13. The Criminal Procedure Act, as a general rule, requires a court order before arrest, but nevertheless allows the police to arrest a person, inter alia, if an officer has reason to believe that a person had committed, is committing or is about to commit an offence or may attempt to destroy evidence of a major crime (sect. 40). The arrestee must be verbally informed immediately of the reason for arrest and the reason must be confirmed in writing within 12 hours of arrest. Furthermore, arrestees must have access to a lawyer at the time of arrest. The same act provides for investigative detention for up to four hours without the detention being classified as a formal arrest (sect. 50 (d)).

14. The Penal Code of Maldives (Law No. 6/2014) sets out a system of prohibitions and penalties to address conduct that unjustifiably and inexcusably causes or threatens harm to those individual or public interests entitled to legal protection, including Islam, life, lineage, mind and property (sect. 11). Section 92 of the code lists authorized terms of imprisonment ranging from “not more than 3 months” for a class 3 misdemeanour to “death or imprisonment for not more than 25 years” for a class 1 felony. The death penalty is available only for the most egregious form of a purposeful killing of another person.

15. The Prison and Parole Act sets out rules regarding, inter alia, the detention of accused persons, persons detained following a court order and persons to be detained under the Maldives Immigration Act, as well as rules regarding the imprisonment of convicted persons. In particular, article 4 of the act states that persons under arrest, detention and imprisonment must be detained in their respective detention centres based on their levels of criminality and stages of conviction. Under the act, persons whose investigation has been completed, but are being detained under a court order for detention before the beginning of trial or until the end of trial are to be held in a remand prison. Article 155 of the act stipulates that the Minister of Home Affairs can establish a detention facility after making a regulation under the act, to detain migrant workers on request under the Maldives Immigration Act until they are deported.

### **III. Positive measures and initiatives**

#### **A. Ratification of international human rights instruments**

16. The Working Group welcomes the approval by the Majlis to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, noting that enforced disappearances constitute an aggravated form of arbitrary detention. The Attorney-General is drafting the legislation required to incorporate the Convention into national law.

17. In September 2019, Maldives ratified the third Optional Protocol to the Convention on the Rights of the Child. Maldives was among the first countries to ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in February 2006.

#### **B. Human Rights Commission of Maldives and oversight of places of deprivation of liberty**

18. The establishment of the Human Rights Commission on 10 December 2003 was an important step. Under section 20 of the Human Rights Commission Act (No. 6/2006), the responsibilities of the Commission include making inquiries in relation to human rights complaints and violations. Section 21 of the same act vests the Commission with the authority to inspect any premises where persons are detained. The Commission has also been designated as the national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

19. While the Working Group welcomes the efforts of the Human Rights Commission to establish a presence in the southern part of the country through the opening of a regional office in Addu, there are challenges in establishing a presence in the north. The work of the Commission is constrained by the lack of resources needed to discharge its mandate effectively and to establish a presence throughout the country. It is essential that the Commission receive the requisite resourcing, both financial and human, to effectively discharge its mandate, including as the national preventive mechanism.

20. While the Working Group acknowledges the 2020 amendments to the Human Rights Commission Act, it stresses that the independence of the Human Rights Commission must be strictly respected, consistent with its status under article 189 of the Constitution.

21. In addition to the Human Rights Commission, the National Integrity Commission, the Inspector of the Correctional Service, the Prosecutor-General, the Child Ombudsperson and several Parliamentary Committees have authority to conduct visits to places of deprivation of liberty. The Working Group notes that these bodies have been given exceptionally limited resources with which to discharge this mandate.

22. Regular oversight over detention facilities prevents and reduces arbitrary deprivation of liberty. The range of entities with mandates to conduct monitoring is positive. However, it is important that monitoring is properly resourced and well-coordinated. The Working Group spoke with detainees who have not been able to meet with representatives of monitoring bodies, and with detainees who have held meetings but have received no further follow-up. It is also essential that complaints may be made confidentially. The efforts made by the Inspector of the Correctional Service to initiate confidential Skype calls with the families of detained persons is a good practice.

#### **C. Police reform**

23. In 2021, the Maldives Police Service Act (No. 34/2020) came into force. Through the act, which was adopted to professionalize the Police Service and to address misconduct, a police board was established, composed of civilians with the power to recommend the removal of officers who do not meet professional standards.

## **D. Bar Council of Maldives**

24. In 2019, the Bar Council of Maldives was established, in recognition of the importance of an independent body empowered to represent legal practitioners throughout the country. The ability of the Bar Council to oversee self-regulation of the legal profession and its continuous improvement is essential in ensuring effective legal assistance to persons deprived of their liberty and is thus an important safeguard against arbitrary deprivation of liberty.<sup>1</sup>

## **E. Accountability for past human rights violations**

25. In December 2020, the Government ratified the Transitional Justice Act (No. 28/2020) and established the Office of the Ombudsperson for Transitional Justice, seeking to redress State-led violations from 1 January 1953 to 17 November 2018.

26. In November 2018, the Presidential Commission on the Investigation of Murders and Enforced Disappearances was established to investigate the large number of unresolved deaths and enforced disappearances that occurred between 2012 and 2018. Although it has reportedly been challenging to obtain evidence, the Commission is an example of a programme working to deliver justice and offer closure to victims and their families, which is vital for Maldivian society.<sup>2</sup>

## **F. Engagement with international human rights mechanisms**

27. The Working Group commends the spirit of openness and cooperation of the Government towards the United Nations human rights mechanisms. The visit of the Working Group and the recent and forthcoming visits of other special procedures is a clear expression of such constructive engagement.

28. The National Mechanism for Reporting and Follow-Up has been established by the Government to monitor the implementation of recommendations made by international human rights bodies. Since 2015, the Working Group has adopted four opinions in relation to Maldives,<sup>3</sup> three of which have been subject to court orders recognizing the illegality of the proceedings. The Working Group welcomes the implementation of those opinions. However, the Government should also implement the views of the Human Rights Committee (communication No. 2785/2016).

## **G. Remote court hearings**

29. During its visit, the Working Group was informed of the practice of conducting remote court hearings through digital means, adopted since the start of the coronavirus disease (COVID-19) pandemic. By an amendment to the Criminal Procedure Act in July 2020, audio-video conferencing was recognized as a mode of conducting hearings. This practice allows the judiciary to continue providing services remotely. Moreover, the broadcasting of court hearings enhances transparency and encourages public trust in the justice system. The Working Group welcomes this effort to deliver justice sector services to remote populations, noting that it is an important measure to safeguard the right to a fair trial during a public health emergency<sup>4</sup> and as an ongoing practice.

<sup>1</sup> A/HRC/45/16, para. 55.

<sup>2</sup> Ibid., annex I, deliberation No. 10.

<sup>3</sup> Opinions No. 91/2017, No. 15/2017, No. 59/2016 and No. 33/2015 (these opinions and all following opinions mentioned in the present report are available at <https://wgad-opinions.ohchr.org/Search/Search>).

<sup>4</sup> A/HRC/45/16, annex II, deliberation No. 11, paras. 20–21.

## IV. Main findings concerning the right to personal liberty

30. In determining whether the information provided, including from persons interviewed during the visit, raised issues regarding the arbitrary deprivation of liberty, the Working Group referred to the five categories of arbitrary deprivation of liberty outlined in paragraph 8 of its methods of work (A/HRC/36/38).

### A. Detention in the context of the criminal justice system

#### 1. Presentation before a judicial authority

31. Article 48 (d) of the Constitution requires that anyone arrested or detained be presented before a judge within 24 hours to determine the legality of detention. According to the testimony received, this provision is consistently implemented. While this is very encouraging, articles 9 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights require that judicial hearings be meaningful, involving consideration of whether the imposition of pretrial detention is justified in each case. In many cases, pretrial detention hearings reportedly lack examination of individual circumstances, including whether alternatives to detention would render detention unnecessary.<sup>5</sup>

32. The Working Group was informed that many pretrial detention requests are sought by the police on the basis of an “intelligence report”, which is not shared with the detained person and/or their lawyer and is reportedly accorded high probative value by the courts. This effectively prevents the person from challenging the legality of his/her detention since the reasons for requesting pretrial detention are confidential.

33. The Working Group recalls that persons deprived of their liberty must be informed, *inter alia*, of the reasons justifying detention, possible judicial avenues to challenge the arbitrariness and lawfulness of the detention and the right to bring proceedings before a court and to obtain appropriate and accessible remedies without delay. The review by a court of the legality of deprivation of liberty must be carried out regularly and must involve a substantive, individualized assessment of whether the detention remains necessary, reasonable and proportionate.

#### 2. Pretrial detention

34. Article 49 of the Constitution provides that pretrial detention shall be an exceptional measure and that no person shall be detained prior to sentencing, unless the danger of absconding or not appearing at trial, protection of the public, or potential interference with witnesses or evidence dictate otherwise. A decision to detain a person on remand can be appealed.

35. Despite these protections, the Working Group observed that pretrial detainees constitute approximately 30 per cent of those currently held in detention facilities. Overall, there is an excessive period of pretrial detention. While the average time spent in pretrial detention, according to the authorities, is about 1.5 years, it is common for people to be in pretrial detention for 3 to 4 years, or longer. This is incompatible with article 9 of the International Covenant on Civil and Political Rights. Pretrial detention should be an exceptional measure: the Working Group urges the authorities to make greater use of alternatives to detention, including conditional release, bail and reporting. This includes implementation of the revised prosecution directives of 2019 (codified in the Criminal Procedure Act) which require the Prosecutor-General to keep remand orders under review every 30 days and, when there are no grounds for remand, to seek a judicial order for release.

36. Given the large number of persons held in, and the excessive length of, pretrial detention, pretrial facilities operate over capacity and many pretrial detainees are in police custody for months and even years. Police custody is not designed to hold people for such prolonged periods and the staff lack the requisite training to manage lengthy custodial

<sup>5</sup> Human Rights Committee, general comment No. 35 (2014), para. 38.

detention. Such extended detention is also a significant restriction of the presumption of innocence.

37. Contrary to the requirements of article 10 (2) (a) of the International Covenant on Civil and Political Rights, and rule 11 (b) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), as well as the prison and parole act, most prisons in Maldives hold pretrial and sentenced detainees together. All non-convicted detainees have the right to be presumed innocent and to be held in decent conditions, consistent with their status as non-convicted persons.

38. The Working Group, recalling the concluding observations of the Committee against Torture,<sup>6</sup> and urges Maldives to abide by its international obligations to ensure that: pretrial detention is closely monitored so that it does not become a systematic practice; pretrial detainees are held separately from convicted prisoners; and alternatives to pretrial detention are promoted, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).

### **3. Right to legal assistance**

39. The Working Group is concerned about the practical implementation of the right to legal assistance. It learned that many detainees do not have unfettered access to legal counsel during pretrial detention and trial proceedings. To access their lawyers, detainees must complete a form, which is submitted to the officers, who then act upon the request. A reply to a request to meet a lawyer takes at least two days. Moreover, a detainee can only speak with a lawyer who has registered with the Correctional Services as the lawyer for his specific case, resulting in further delays if there are errors with such registration. In some cases, this may prevent the detainee from contacting a lawyer of his or her choosing, contrary to article 14 (3) (b) of the International Covenant on Civil and Political Rights. The Working Group interviewed numerous detainees who experienced significant delays in contacting their lawyers, while some were unable to do so.

40. The Working Group encourages the Government to ensure, in practice, that all persons are informed upon apprehension of their right to legal assistance by counsel of their choice or at no cost if they cannot afford a lawyer, in conformity with section 44 of the Criminal Procedure Act.<sup>7</sup> The authorities must also ensure that all detained persons are afforded, in law and in practice, all fundamental legal safeguards from the outset of their deprivation of liberty, including prompt access to a lawyer or to free and effective legal aid during all proceedings.<sup>8</sup>

### **4. Undue delay**

41. Criminal proceedings are regularly delayed, sometimes lasting for several years. One reason why delays occur is reportedly because the courts do not hold continuous hearings. There is a practice of scheduling a trial hearing for a short period and for the next hearing to be scheduled in the following month, which does not lead to efficient handling of trial matters. According to articles 9 (3) and 14 (3) (c) of the International Covenant on Civil and Political Rights, defendants must be tried within a reasonable time and without undue delay.

42. Section 163 of the Criminal Procedure Act was amended to mandate the courts to conduct continuous trials. The Working Group recommends that government agencies, including the Police Service and Prosecutor-General, work with the Department of Judicial Administration to establish effective case management procedures and publish court schedules that allow continuous hearings.

<sup>6</sup> CAT/C/MDV/CO/1, para. 28.

<sup>7</sup> See United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, principle 9 and guideline 8; see also A/HRC/45/16, para. 51.

<sup>8</sup> CAT/C/MDV/CO/1, para. 26.

## **5. Anonymous witnesses**

43. The use of anonymous witnesses is reportedly a practice in criminal proceedings, involving serious criminal offences like murder, gang related crimes and cases of terrorism, when witnesses have reason to fear retaliation for their testimony.<sup>9</sup> This practice violates fair trial guarantees, particularly under article 14 (3) (e) of the International Covenant on Civil and Political Rights. The Attorney-General has proposed an amendment to the Criminal Procedure Act as a temporary measure until more comprehensive legislation on witness protection can be enacted. While it may be difficult to effectively protect witnesses in small communities, it is an initiative that should be pursued in order to ensure fair trial guarantees.

## **6. Deferred sentences**

44. The Working Group was informed of some 400 individuals whose sentences have been deferred. Such cases include individuals who were sentenced to a term of imprisonment and released temporarily for reasons including medical leave but were not recalled due to administrative errors or lack of space at the prison facility. Some individuals have reportedly been in this situation for over 10 years. They can be recalled to prison at any time. Furthermore, the outstanding sentence appears on their records, preventing them from securing employment or claiming State benefits. Some of these individuals have been in this situation for a period longer than their original sentence.

45. Recalling individuals to complete their prison sentences after such excessive delays, not of their making but rather the fault of the authorities, is unjustified and may be arbitrary. The Working Group invites the Government to address the situation as a priority.

## **7. Imprisonment for debt**

46. Despite the prohibition of imprisonment for non-fulfilment of a contractual obligation under article 55 of the Constitution, the Working Group came across several cases where individuals were de facto imprisoned for inability to repay a debt. In most cases, such individuals were imprisoned for contempt of court. However, since the grounds for contempt of court consist of the failure to comply with a court order to repay a debt or other contractual obligation, such individuals were, de facto, imprisoned for debt. This situation arises due to the absence of alternatives to repay the debt, including effective legal regulation of bankruptcy.

47. While prison terms imposed in such cases are measured in months, the prohibition of imprisonment for debt under article 11 of the International Covenant on Civil and Political Rights is absolute and forms part of customary international law. As the Working Group has stated previously, detention due to inability to repay a debt in itself amounts to arbitrary deprivation of liberty.<sup>10</sup> It is also arbitrary as it discriminates against individuals on the basis of their economic status.<sup>11</sup>

48. The Working Group urges the Government to address the issue and resort to alternative measures of debt recovery through, for example, ensuring effective legal regulation of bankruptcy, the deduction of debt payments from salaries and flexible repayment schedules.

## **8. Child justice**

49. The Working Group welcomes section 29 of the Child Rights Protection Act (No. 19/2019), which sets the age of criminal responsibility at 15. It invites the Government to further raise the age of criminal responsibility, recalling that article 1 of the Convention on the Rights of the Child defines as a child anyone under age 18.

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<sup>9</sup> General policy directives of the Attorney General; criminal procedure act No. 12/2016, and Supreme Court ruling in case No. 2020/SC-A/30.

<sup>10</sup> See Opinions No. 75/2020, No. 38/2013 and No. 31/2001; see also [A/HRC/42/39/Add.1](#), para. 65, and [A/HRC/45/16/Add.2](#), para. 48.

<sup>11</sup> See Opinion No. 75/2020.

50. The recent adoption of the Juvenile Justice Act (No. 18/2019), coupled with the Child Rights Protection Act (No. 19/2019), is an important step in bringing Maldives in line with its obligations under the Convention on the Rights of the Child in the area of child justice. The two acts adopt a progressive stance, placing an emphasis upon diversion of children from the formal criminal justice process and emphasizing that the deprivation of liberty of a child should be a measure of last resort. The Working Group observed that the detention of children is not widespread and commends the Government for this major achievement. Furthermore, the Working Group commends the appointment of the Children's Ombudsperson, in accordance with section 113 of the Child Rights Protection Act.

51. The delivery of child justice at the local level is essential for its effectiveness. This is being achieved through the use of the relatively newly conferred powers upon local councils through the 2019 amendments to the Decentralization Act of 2010. However, diversion routes required by the Juvenile Justice Act are still to be implemented. In this regard, the Working Group commends the establishment of island-level multisectoral community social groups (known as the IBAMA initiative), designed in cooperation with the United Nations Children's Fund and now part of the Government's strategic action plan. The community network, reaching 107 islands, is a significant step towards the prevention of violence and referral to services for vulnerable groups.

52. The Juvenile Justice Act also requires that children in conflict with the law, if sentenced, be placed in a facility specifically designed for children. Although there was no such facility during the visit of the Working Group, it welcomes the establishment of such a unit on 30 January 2022 in Asseyri Prison. Although the unit is segregated from the main prison, the Working Group encourages the authorities to develop entirely separate facilities where children can be held when detention is necessary as a measure of last resort.

53. The Working Group recalls the concluding observations of the Committee on the Rights of the Child<sup>12</sup> and urges the Government to ensure, in cases in which detention is unavoidable, that it is carried out in compliance with international standards, in conditions suitable for children, including with regard to access to education, recreation and health services.

## 9. Conditions of detention

54. Severe overcrowding remains an issue in most detention facilities. The Working Group observed that remand prisoners were held in the same conditions as convicted detainees, in some cases in cells without lights, ventilation or fans in conditions of tropical heat. Time in the fresh air was exceptionally limited, with some detainees held in their cells for the entire day and only allowed out once a month for about an hour. Moreover, in Male' Prison, detainees are only allowed out of their cells in a large cage in the courtyard, measuring approximately 8 metres by 4 metres. The majority of detainees did not have beds or mattresses, and in some cells, has to sleep in very close quarters, with some detainees unable to stretch their legs.

55. The Working Group is concerned that medical services in some prisons are inadequate. While the Working Group welcomes recent efforts by the Correctional Services to implement the Nelson Mandela Rules, it concludes that conditions of detention do not generally meet international standards.

56. Holding detainees in such conditions may adversely affect their ability to effectively participate in proceedings and to present an effective defence and appeal.<sup>13</sup> It is therefore important for the Government to address the conditions within detention facilities as a priority. The Working Group considers that overcrowding could be addressed by reducing the use of pretrial detention, establishing new separate facilities for pretrial detainees and implementing alternative measures to detention. It is paramount that time in the fresh air be provided to all detainees on a daily basis, as required by rule 23 of the Nelson Mandela Rules. Detainees should be allowed to enjoy a reasonable amount of time outside their cells and should be provided with a choice of purposeful activities. Anyone in detention, including

<sup>12</sup> CRC/C/MDV/CO/4-5, para. 69 (f)).

<sup>13</sup> Opinion No. 52/2018, para. 79 (j), and E/CN.4/2004/3/Add.3, para. 33.

those held in pretrial detention, must be allowed to spend a part of the day outside their cells, in addition to at least one hour of exercise in the open air.<sup>14</sup>

## **10. Imbalance in the delivery of justice**

57. The Working Group was informed of imbalances in the delivery of justice across Maldives due to disparities arising from the judicial processes in the south and north of the archipelago. The lack of consistent approach was highlighted by some stakeholders who spoke of “elite justice” whereby only well-known individuals would receive professional, high-quality treatment through judicial proceedings.

## **B. Detention in the context of drug control**

58. Maldives is experiencing a high rate of substance use. A recent mapping exercise by the National Drug Agency revealed that there is currently a much wider range in the age of substance users aged 17 to 68. While the Drugs Act (No. 17/2011) envisages a progressive approach to the treatment of addiction as a health issue, the actual approach to drug offences remains punitive, resulting in the incarceration of a large number of persons who could receive more effective treatment in voluntary community-based programmes.<sup>15</sup>

### **1. Rehabilitation ordered by the Drug Court**

59. The Working Group visited the Drug Treatment and Rehabilitation Centre, which is operated by the National Drug Agency. There are two ways of receiving treatment for addiction: by voluntary admission and by order of the Drug Court in Male’, with approximately 90 per cent of all current admissions taking place pursuant to a court order. A person who is undergoing voluntary treatment is reportedly free to leave the Drug Treatment and Rehabilitation Centre at any time, while people who have been admitted under a court order are in effect detained, unable to leave before the treatment programme is completed without risking the reimposition of their suspended sentences, usually three years imprisonment.

60. Persons brought before the Drug Court are reportedly required to submit to an assessment of their drug dependency by a panel of experts of the National Drug Agency, including their willingness and suitability to complete a rehabilitation programme. If they are considered eligible, the Drug Court suspends the three-year sentence that would otherwise have been imposed and the individuals are transferred to the Drug Treatment and Rehabilitation Centre for treatment for between four to six months. However, there are usually long waiting times for males (but not females) to be admitted to the Centre, often resulting in relapse and the suspended sentence being reactivated.

61. Individuals who complete the rehabilitation programme are released but must complete a further community treatment. During this period, they must regularly report to the police, provide a urine sample and attend counselling.

62. Some people have failed these requirements, in some cases, because of the reporting obligations and lockdown restrictions imposed during the COVID-19 pandemic, which made it difficult to comply. In other cases, people could not afford transportation to regularly register with the National Drug Agency or could not afford the expense of living in Male’. As a result, they were sent to prison to serve the original sentence. In other cases, a more flexible approach was adopted during the COVID-19 pandemic, as individuals were allowed to report to local police stations.

63. However, in other cases, failure to comply occurred after people were no longer drug dependent and had settled into family life, which meant that they would have to return to prison. The progressive ethos of the Drugs Act is limited by the absence of flexibility given to those tasked with enforcing drug control measures, including the National Drug Agency, to apply discretion in preventing injustice in individual cases. The Working Group welcomes

<sup>14</sup> A/HRC/42/39/Add.1, para. 41.

<sup>15</sup> A/HRC/47/40.

information received that there is a practice of giving individuals three chances to meet the requirements of the programme.

64. Giving drug-dependent persons a choice between being incarcerated and undertaking rehabilitation does not serve as an incentive to improve their health, only to avoid prison. The rate of relapse is very high. Positive, evidence-based messaging through the media and other publicly accessible resources may assist in reducing stigmatization in the community and promote better understanding of the health issues surrounding substance use. The levels of stigma faced, especially by female substance users, is reportedly very high, and further data on substance use by women is needed to inform policy development. The fact that drug policy now falls under the Ministry of Health is a step in the right direction, towards drug dependency being treated as a health issue.

## **2. Absence of medical treatment for withdrawal symptoms**

65. According to testimony received, many detainees who are arrested and detained in a custodial, remand or prison facilities experience withdrawal symptoms. In most cases, while the authorities noted the availability of medical care within the facility, detainees who had a substance addiction received only painkillers for withdrawal symptoms. This raises concern that detainees, particularly in the early stages of the criminal justice process, may be interrogated while they are under the influence of substances, potentially resulting in involuntary statements or confessions. The Working Group urges the authorities to ensure that the National Drug Agency is sufficiently funded to provide in-house detoxification treatment to custodial, remand and convicted detainees.

## **3. Sentences imposed under the previous drug regime**

66. In the past, detainees received very heavy sentences under the drug legislation, in some cases multiple sentences of up to 25 years' imprisonment, consistent with the legislation at the time, but have not received the benefit of a lighter sentence under the current Drugs Act. Several detainees could not afford a lawyer and, given that the offence was not considered serious under the previous legislation, a public defender was not provided at the time. While the sentences of some detainees have been reviewed and reduced by the courts, in many cases this has not occurred. There does not appear to be a consistent practice in this regard.

67. Article 59 of the Constitution states that if the punishment for an offence has been reduced between the time of commission and the time of sentencing, the accused is entitled to the benefit of the lesser punishment. While this provision does not cover the situation of persons already sentenced under the previous drug legislation, the Working Group urges the authorities to apply the spirit of this article in extending leniency to persons detained under the previous legislation, consistent with the obligations of Maldives under article 15 (1) of the International Covenant on Civil and Political Rights. The authorities should grant clemency to all detainees in this situation.

## **C. Detention in the context of counter-terrorism measures**

68. While there is a need to address violent extremism, a balance must be struck between national security and compliance with international human rights obligations. The Security Council, the General Assembly and the Human Rights Council have affirmed that any counter-terrorism measures must be consistent with international law, including human rights norms.<sup>16</sup>

<sup>16</sup> See Security Council resolution 2462 (2019), General Assembly resolution 75/291 and Council resolution 45/11.

## 1. Prevention of Terrorism Act

69. The recently amended Prevention of Terrorism Act (No. 32/2015) continues to permit law enforcement officers to arrest and search persons suspected of terrorism without a warrant,<sup>17</sup> contrary to articles 46 and 47 of the Constitution.

70. Furthermore, under certain circumstances, the right to privileged meetings with legal counsel of a person arrested under the act may be withheld for a duration of seven days from the day of arrest.<sup>18</sup> Under the act, the authorities have a period of up to 90 days to bring charges against continuously detained suspects.<sup>19</sup> This is contrary to the right set out in article 51 (a) of the Constitution, under which everyone charged with an offence has the right to be informed “without delay” of the specific offence, and the right under article 9 (2) of the International Covenant on Civil and Political Rights to be “promptly” informed of the charges.

71. The Working Group considers that the challenges of securing evidence in terrorism cases and practices elsewhere should not take precedence over constitutional rights and international human rights standards.

## 2. Rehabilitation at the National Reintegration Centre

72. The National Reintegration Centre has been built on Himmafushi island to serve as a rehabilitation facility for Maldivians repatriated from conflict zones. The centre, which will operate under the Ministry of Home Affairs, was not yet operational at the time of the Working Group’s visit. The observations made of the facilities at the centre suggest that it is being prepared to hold a large number of individuals.

73. A recent amendment to the Prevention of Terrorism Act mandates the Maldives Police Service to conduct risk assessment to determine whether repatriated individuals, including children, were the victims or perpetrators of terrorism. It is however unclear whether the police have the requisite specialist expertise to carry out such assessment. Those determined to be perpetrators will be brought to trial for terrorism offences and may be required to undergo rehabilitation. A committee comprising of civilian agencies determines the reintegration and rehabilitation programmes victims will be required to complete. The exact details of such rehabilitation are unknown and the lack of clarity over the exact purpose of the National Rehabilitation Centre is concerning.

74. The Working Group is apprehensive that individuals may be detained potentially for prolonged periods or even indefinitely, until a court orders that rehabilitation is complete. Any assessment process must itself be in compliance with human rights standards and the criteria for making a determination must be transparent and consider the gender and age of repatriated individuals, with special attention and care in assessing risks involving children.

75. Moreover, it is also unclear how repatriated children will safely be housed alongside men and women who have returned from a conflict zone, nor how a risk assessment will be carried out in relation to children, appropriately distinguishing between the responsibilities of adults and juveniles. The Working Group recalls that, as noted by the Committee on the Rights of the Child and the Security Council, children who had been recruited in violation of international law by armed forces and were accused of having committed crimes during armed conflicts should be treated primarily as victims of violations of international law. Furthermore, States are encouraged to seek non-judicial measures focused on reintegration as alternatives to prosecution and detention. Due process for all children detained for association with armed forces and armed groups should be applied.<sup>20</sup>

76. Monitoring and control (or “monicon”) orders may also be made against individuals for up to one year. These orders are reportedly supervised by the Maldives Police Service and allow the placement of suspects under electronic monitoring by ankle bracelet and other

<sup>17</sup> See Law No. 15/2019 (second amendment to Law No. 32/2015 (Anti-Terrorism Act)).

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> See Committee on the Rights of the Child, general comment No. 24 (2019), para. 100; see also Security Council resolution 2427 (2018).

restrictions of movement. In accordance with section 39 of the Prevention of Terrorism Act, the “monicon” order may be reviewed by the High Court upon a request made within 90 days of order’s issuance. Furthermore, section 40 of the Prevention of Terrorism Act allows for appeal in line with article 56 of the Constitution. The Working Group learned of the detention of one individual, arrested in October 2020 on suspicion of terrorist activities, subsequently released, but currently under a monitoring and control order.

### 3. Special Management Unit

77. A Special Management Unit with 50 cells and capacity to hold 100 detainees has been built at Maafushi Prison. The unit will segregate and seek to rehabilitate inmates who have been identified through a risk assessment process as holding extreme views. At the time of the visit, 45 inmates at Maafushi Prison had been assessed as posing such a risk.

78. The assessment is an administrative process, which will be repeated every six months or at random intervals. The assessment can be challenged before the Commissioner of Correctional Services, who has the authority to order reassessment. However, the Working Group is concerned that the Special Management Unit may be used to detain persons who have peacefully exercised their rights, contrary to articles 18, 19, 21 or 22 of the International Covenant on Civil and Political Rights, as there are no safeguards in place to guard against this eventuality.

## D. Detention in the context of migration

79. Maldives is highly reliant on a migrant labour force, a large majority of which is undocumented. The Working Group observed that migrant workers in detention have limited rights, including in accessing justice.

80. The Immigration Act of 2007 does not expressly permit or prevent detention in the context of migration, although the prison and parole act allows the Minister of Home Affairs to establish a detention facility. This was highlighted as problematic, given that the current immigration detention facility has not received such a designation. Some stakeholders argued that this is illegal. Moreover, the Immigration Controller detains individuals, potentially indefinitely, under article 21 (d) of the act. Migrants are typically arrested by the police, referred to Maldives Immigration, and held in a detention facility operated by the Maldives Correctional Services.

81. In practice, migrants do not have a realistic opportunity to challenge the legality of their detention before a judge, and no legal or interpretation assistance is provided. As proceedings and communications are in Dhivehi, many migrants face a language barrier, even in requesting contact with their embassies. Very limited consular assistance is available, and migrants are also hampered by a lack of knowledge on how to access and navigate the legal system.

82. The Working Group is concerned at the informality of some immigration detention facilities. For example, it learned of an informal unregistered facility of a State-owned company where large numbers of foreign workers were detained following an incident on an island resort.

83. The decision to release a migrant in detention can be based on negotiations between employers and Maldives Immigration, which approves the release. The ability of employers to negotiate release places migrants in a position of vulnerability. Additionally, while witness testimony can be taken prior to trial under the Criminal Procedure Act, migrants who are witnesses in criminal proceedings remain in immigration detention for years until the trial takes place and their testimony is given. The Working Group encountered such migrants who have been detained for over two years.

84. In principle, detention in the migration context must be exceptional, based on an individualized assessment of the need to detain, subject to judicial review and for the shortest period of time.<sup>21</sup> The Working Group urges the Government to bring its immigration regime

<sup>21</sup> See [A/HRC/39/45](#), annex, revised deliberation No. 5, para. 12.

into compliance with international standards. The Working Group welcomes the fact that female migrants are not detained but subjected to a system of citations and monitoring while living in the community.

85. Maldives is not party to the Convention relating to the Status of Refugees and its 1967 Protocol. There is no asylum adjudication, nor any national refugee protection mechanisms, contrary to the right to seek asylum under article 14 (1) of the Universal Declaration of Human Rights. Additionally, as the Working Group recognized, in its revised deliberation No. 5 on deprivation of liberty of migrants, the right to personal liberty extends to all, including migrants and asylum seekers, irrespective of their citizenship, nationality or migratory status.<sup>22</sup> The Working Group encourages building governmental and civil society capacity to identify those in need of international protection, in close collaboration with OHCHR.

## **E. Detention in the context of social care**

### **1. People with psychosocial disabilities**

86. The Working Group was informed that the draft mental health bill will set out the legal framework for both voluntary and involuntary admissions to a mental health facility for persons with psychosocial disabilities. The Working Group was informed that according to the draft bill, a mental health tribunal will determine whether to confine persons to mental health facilities. Aside from a separate, six-bed ward in the Indira Gandhi Memorial Hospital in Male', the Guraidhoo Home for People with Special Needs is the only facility for persons with psychosocial disabilities. Some of the hospitals on the islands, like the Addu Equatorial Hospital, have set aside one room for those in acute mental health conditions. Such rooms are rarely used, mainly owing to the lack of professional staff. The Working Group was informed that in Maldives, there are only a few psychiatrists and psychologists, and a limited number of other mental health professionals.

87. The current legal framework applicable to involuntary admission to a mental health facility is found in a regulatory framework described to the Working Group as "opaque" and "lacking in precision". In principle, involuntary admissions require a referral from a psychiatrist. It is unclear whether and how such a referral can be challenged.

88. When visiting the Guraidhoo Home for People with Special Needs, the Working Group encountered 23 individuals who were formally discharged but were still residing in the facility as their families had refused to accept them: there is currently no community-based care, especially aftercare, available. Such individuals therefore have no choice but to remain in the home, potentially indefinitely, preventing them from engaging in employment, education or vocational training. The Working Group was informed of plans to open a half-way house for those who have been discharged at Villigili island in the first quarter of 2022. However, noting that the home already has 23 discharged patients in residence, the half-way house, which will only provide some 20 places, will not address current needs.

89. The Working Group observed challenging working conditions at the Home for People with Special Needs. Operating over capacity, the facility is served by one medical officer, three nurses and one physiotherapist; the remaining staff are caretakers and administrative personnel. There is no in-house psychiatrist, psychologist or counsellors or other medical professionals needed to serve the diverse health needs of the individuals held in the facility. The responsibility for the facility has been transferred from the Ministry of Health to the Ministry of Gender, Family and Social Services, which has made it harder to engage with the few medical professionals who work in Male' hospital or on Guraidhoo island itself, as they fall under the Ministry of Health. In addition, the home suffers from chronic underfunding, and is struggling to provide the most basic care. Although some additional funding has been recently provided, it is insufficient.

90. While the dedication and good will of the staff of the Home for People with Special Needs, who go above and beyond what can be expected, was obvious, the situation is

<sup>22</sup> Ibid., para 7.

unsustainable. The Government must address this situation with utmost urgency, including through public awareness campaigns to combat the prejudice against those with psychosocial disabilities.

## 2. Care for older persons

91. The Working Group learned that there is no coherent legal regulation to protect the rights of older persons. While the regulatory framework applicable to disability and domestic violence addresses some of the concerns in this area, it is fragmented and incomplete. The draft elderly protection law is being finalized.

92. There are no facilities for older persons in Maldives and no community-based service. The only such de facto facility in the country is the Home for People with Special Needs, which is in fact a facility designated for persons with psychosocial disabilities. At the time of the Working Group's visit, the facility held 25 older persons, sometimes in wards mixed with psychiatric patients. This is incompatible with international standards,<sup>23</sup> as acknowledged by the authorities. The home also lacks the requisite in-house expertise in geriatric care and, as noted above, suffers from chronic underfunding.

93. Additionally, the Working Group was informed of plans to open a facility for older persons in Addu. However, it is already clear that the number of planned places in that facility will not address current needs.

94. The Working Group urges the Government to prioritize care for those most vulnerable, including older persons, and emphasizes the provision of appropriate care in the community, confining older persons to facilities only as measure of last resort.

## 3. Children under State care

95. The Working Group commends the adoption of the Child Rights Protection Act (No. 19/2019) setting out the legal framework for the protection of children's rights. Section 10 of the act requires the State to provide special care and protection for children removed temporarily or more permanently from their families, based on the best interests of the child.

96. The Working Group was informed that the authorities make every effort to resettle children with family members or to make alternative arrangements, such as foster care. There are also facilities available for children who cannot be resettled, and the Working Group was informed of such facilities in the atolls as well as nearby in Male'. The Working Group observed staff tasked with working with children in need of care and commends the flexible approach adopted in some cases, allowing unique solutions to individual situations. However, as in many other areas, the provision of care for such children is severely underfunded and lacks the required range of professional staff to meet diverse health needs.

97. As noted above, the Guraidhoo Home for Persons with Special Needs is the only facility for people with psychosocial disabilities in Maldives. As such, it also holds persons under age 18. Owing to the fact that the facility is operating over capacity, the two children currently residing in the home are held in the same space as adults. The staff have been left with no option as there is no other place in the country for the children. The Working Group urges the Government to ensure immediate compliance with its obligations under the Convention on the Rights of the Child, article 7 of the Convention on the Rights of Person with Disabilities, as well as section 18 of the Child Rights Protection Act (No. 19/2019), recognizing the right of every disabled child to a dignified life.

## V. Conclusions

98. **The Working Group commends the Government for its willingness to submit itself to scrutiny through the visit and considers that the findings in the present report will support the efforts of the Government to address situations of arbitrary deprivation of liberty.**

<sup>23</sup> See General Assembly resolution 46/91, para. 13.

99. Positive changes are being made across Maldives in relation to the deprivation of liberty, including: approval of the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance and ratification of the Optional Protocol to the Convention on the Rights of the Child ; functioning of the Human Rights Commission and its designation as the national preventive mechanism, and the broad range of State and non-governmental entities mandated to conduct monitoring; reform of the Maldives Police Service; self-regulation of the legal profession by the Bar Council of Maldives, as well as initiatives to address past human rights violations, cooperation with international human rights mechanisms and remote court hearings.

100. However, problems within the criminal justice system place defendants at risk of arbitrary detention, namely:

(a) While individuals are normally presented before a judge within 24 hours to determine the legality of their detention, such presentation lacks examination of individual circumstances: moreover, the reasons for requesting pretrial detention are often undisclosed, effectively preventing persons from challenging the legality of their detention;

(b) The use of pretrial detention is widespread, and the length of pretrial detention is excessive, contrary to article 9 of the International Covenant on Civil and Political Rights: in addition, pretrial detainees and convicted persons are not separated, contrary to article 10 (2) (a) of the Covenant and rule 11 (b) of the Nelson Mandela Rules;

(c) There has been an inability to universally guarantee the right to legal assistance, as many detainees do not have unfettered access to their legal counsel during their pretrial detention and trial proceedings due to cumbersome administrative procedures, which adversely impacts their right to adequate time and facilities to prepare a defence and to communicate with counsel of their choosing, as embodied in article 14 (3) (b) of the International Covenant on Civil and Political Rights;

(d) Criminal proceedings are regularly subject to delays, contrary to articles 9 (3) and 14 (3) (c) of the International Covenant on Civil and Political Rights;

(e) The practice of the use of anonymous witnesses in criminal proceedings concerning serious and organized crimes violates fair trial guarantees, in particular under article 14 (3) (e) of the International Covenant on Civil and Political Rights;

(f) There are instances of individuals being subject to deferred sentences, and subject to recall to prison at any time, often after considerable periods of time;

(g) There are several cases where individuals are de facto imprisoned for inability to repay a debt, contrary to article 11 of the International Covenant on Civil and Political Rights and customary international law;

(h) The Working Group welcomes the establishment of separate unit for juvenile custody in Himmafushi Asseyri Prison on 30 January 2022 and urges the adoption of child-friendly conditions in the facility;

(i) The conditions of detention do not meet international standards and most facilities are severely overcrowded: this may adversely affect the ability of detainees to effectively participate in proceedings and to present an effective defence and appeal, violating article 14 (3) (b) and (d) of the International Covenant on Civil and Political Rights.

101. Challenges with regard to detention in the context of drug control include:

(a) There is a punitive approach to drug dependency, whereby drug-dependent persons are faced with a choice between incarceration and rehabilitation, which does not serve as an incentive to improve their health, only to avoid prison: agencies tasked with enforcing drug control measures, including the National Drug Agency, are not afforded a sufficient degree of discretion in individual cases;

(b) Persons sentenced to long sentences in prison under previous drug legislation did not receive the benefit of a lighter sentence under the current Drugs Act (No. 17/2011), contrary to article 15 (1) of the International Covenant on Civil and Political Rights;

(c) Detainees experiencing withdrawal symptoms for drug addiction are often denied access to adequate medical treatment, raising concerns over procedural and fair trial guarantees under article 14 (3) (g) of the International Covenant on Civil and Political Rights.

102. Recent amendments to the Prevention of Terrorism Act (No. 32/2015) raise concern over compliance with the International Covenant on Civil and Political Rights. In particular, the amendments permit authorities to arrest and search persons suspected of terrorism without a warrant; to withhold, under certain circumstances, the right to privileged meetings with legal counsel for a duration of seven days from the day of arrest; as well as to bring charges against detained suspects within a period of 90 days.

103. The National Rehabilitation Centre has been built to accommodate Maldivians repatriated from conflict zones. Individuals will be detained at the facility upon court order for a specific period for rehabilitation and reintegration, to be reviewed by the court after the given period, although there remains a potential for indefinite detention. It is unclear how repatriated children will be assessed and safely housed.

104. Individuals detained by the Immigration Controller under article 21 (d) of the Immigration Act of 2007 are, in practice, unable to challenge the legality of their detention before a judge and no legal or interpretation assistance is provided, contrary to article 9 (4) of the International Covenant on Civil and Political Rights. Moreover, there is no asylum adjudication, nor any national refugee protection mechanisms, contrary to the right to seek asylum under article 14 (1) of the Universal Declaration of Human Rights.

105. Under the current legal framework, it is unclear whether and how involuntary admissions to a mental health facility can be challenged. In this regard, the draft Mental Health Bill is expected to set out the relevant legal framework both for voluntary and involuntary admissions for persons with psychosocial disabilities.

106. There is no coherent legal regulation to protect older persons. The draft Elderly Protection Law was expected to be considered by the legislature in February 2022. There are no dedicated facilities for older persons in Maldives and no community-based service.

107. The Guraidhoo Home for People with Special Needs is the primary facility for people with psychosocial disabilities in the Maldives. As such, it also holds older persons and those under age 18 and is severely underfunded and under-resourced.

## VI. Recommendations

108. The Working Group recommends that Maldives become party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention relating to the Status of Refugees and its 1967 Protocol; the Convention relating to the Status of Stateless Persons, and the Convention on the Reduction of Statelessness.

109. The Working Group recommends that the Government take the following measures in building upon its positive initiatives to address the arbitrary deprivation of liberty:

(a) Support and allocate necessary resources to the Human Rights Commission – the national preventive mechanism – as well as other oversight bodies, to enable visits in a more coordinated manner to all places of deprivation of liberty across the country and engage with them constructively on the implementation of recommendations;

(b) Implement provisions of the Maldives Police Service Act (No. 34/2020), including those seeking to address misconduct by police authorities;

(c) Support the work of the National Mechanism for Reporting and Follow-Up in monitoring the implementation of recommendations made by international human rights bodies.

110. The Working Group recommends that the Government take the following measures in relation to the criminal justice system:

(a) Ensure that pretrial detention hearings involve effective examination of individual circumstances and that the basis for requesting pretrial deprivation of liberty is disclosed to all persons arrested or detained;

(b) Ensure that the review by a court of the legality of deprivation of liberty is carried out on a regular, periodic basis and involves a substantive and individualized assessment;

(c) Ensure that pretrial detainees are held separately from convicted prisoners and that alternatives to pretrial detention, such as conditional release, bail and reporting, are actively promoted, in compliance with article 10 (2) (a) of the International Covenant on Civil and Political Rights, rule 11 (b) of the Nelson Mandela Rules and rule 6 of the Tokyo Rules;

(d) Ensure that all persons upon apprehension are informed of and enabled to exercise their right to legal assistance by counsel of their choice or at no cost if they cannot afford a lawyer, in compliance with article 14(3) (b) of the International Covenant on Civil and Political Rights;

(e) Establish, in coordination with relevant government agencies, including the Police Service, the Prosecutor-General and the Department of Judicial Administration, effective case management procedures and published court schedules that allow continuous hearings, in compliance with articles 9 (3) and 14 (3) (c) of the International Covenant on Civil and Political Rights;

(f) Introduce effective witness protection measures to end the practice of anonymous witnesses and to ensure fair trial guarantees to the defence, in compliance with article 14(3) (e) of the International Covenant on Civil and Political Rights;

(g) Cease the practice of deferred sentences whereby people may be recalled to complete their prison services after excessive delays due to administrative errors;

(h) Ensure the immediate end to deprivation of liberty for contempt of court on the grounds of a failure to comply with a court order to repay a debt or contractual obligation, in compliance with article 11 of the International Covenant on Civil and Political Rights;

(i) Ensure that dedicated, child-friendly facilities, separated from the current juvenile detention centre in Himmafushi Asseyri Prison, are developed and that detention of a child remains a measure of last resort;

(j) Combat overcrowding and improve conditions of detention by reducing the use of pretrial detention, establishing new separate facilities for pretrial detainees and effectively implementing alternative measures to detention.

111. The Working Group recommends that the Government take the following measures in relation to the deprivation of liberty in the context of drug control:

(a) Afford institutions tasked with enforcing drug control measures, including the National Drug Agency, flexibility to apply discretion in individual cases to prevent injustice;

(b) Grant clemency applications to all persons detained under the previous drug legislation, consistent with the obligations of the Maldives under article 15 (1) of the International Covenant on Civil and Political Rights;

(c) Ensure effective access to adequate medical care for persons deprived of their liberty to be treated for withdrawal symptoms from drug addiction, in line with procedural and fair trial guarantees under article 14 (3) (g) of the International Covenant on Civil and Political Rights;

(d) Fully implement the provisions of the Drugs Act so that drug dependency is treated as a health issue, to be addressed through voluntary community-based programmes rather than punitively through the criminal justice system.

112. The Working Group recommends that the Government take the following measures in relation to counter-terrorism:

(a) Ensure that the Prevention of Terrorism Act (No. 32/2015) and its amendments are fully compliant with the International Covenant on Civil and Political Rights;

(b) Ensure that the process of risk assessment of Maldivians repatriated from conflict zones is in compliance with human rights standards and that the criteria for making a determination is transparent: this assessment must consider the gender and age of repatriated individuals, with special care when assessing risks involving children.

113. The Working Group urges the Government to bring its immigration regime into compliance with international standards, ensuring that detention in the migration context is exceptional, based on an individualized assessment of the need for detention, subject to judicial review, and for the shortest period of time, in compliance with article 9 (4) of the International Covenant on Civil and Political Rights.

114. The Working Group recommends that the Government take the following measures in relation to social care:

(a) Ensure prompt enactment of the Mental Health Act to set out the relevant legal framework for both voluntary and involuntary admissions to mental health facilities for persons with psychosocial disabilities, in full compliance with the International Covenant on Civil and Political Rights;

(b) Ensure prompt enactment of the Elderly Protection Law, establish a dedicated facility for older persons and foster the creation of community-based services;

(c) Ensure provision of adequate financial and human resources to the Guraidhoo Home for People with Special Needs.

## Appendix

### Detention facilities visited

The Working Group visited 14 places of deprivation of liberty:

Male' Prison

Male' Custodial Facility (Atholhu Vehi), Male'

Maafushi Prison, Maafushi

Hulhumale' Prison/Hulhumale' Detention Centre (Pretrial)

Maldives Immigration, Detention Facility, Hulhumale'

Fiyavathi Home for Vulnerable Children\*

Drug Treatment and Rehabilitation Centre, Himmafushi

National Reintegration Centre, Himmafushi

Asseyri Prison, Himmafushi

Home for People with Special Needs, Guraidhoo

Family And Children Centre, Hithadhoo

Hithadhoo Drug Detoxification and Community Rehabilitation Centre

Hithadhoo Police Custodial Facility

Addu Equatorial Hospital

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\* The Working Group was unable to enter the facility due to the outbreak of an infectious disease.