

Submission from the Human Rights Commission of the Maldives for information on the initial report submitted by Maldives under Article 19 of Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment



Human Rights Commission of the Maldives (HRCM)
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Abbreviations

APF	Asia Pacific Forum
SPT	Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
APT	Association for the Prevention of Torture
UNCAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
ICCPR	International Covenant on Civil and Political Rights
PIC	Police Integrity Commission
HPA	Health Protection Agency
HPSN	Home for Persons with Special Needs
HRCM	Human Rights Commission of the Maldives
MPS	Maldives Police Service
MCS	Maldives Correctional Service
MoGF	Ministry of Gender and Family
NDA	National Drug Agency
NPM	National Preventive Mechanism

Contents

Introduction	4
Article 1 – Definition of Torture	5
Article 2 - Prevention of Torture	6
Article 3: Non-Refoulement	23
Article 4: Torture as a Criminal Offence	28
Article 5: Jurisdiction	28
Article 6: Arrest and Detention of Persons Accused of Acts of Torture	29
Article 7: Extradite or Prosecute	29
Article 8: Extraditable Offences	30
Article 9: Mutual Legal Assistance	30
Article 10 Education and Information	30
Article 11: Interrogation Techniques	34
Article 12. Torture shall be Investigated	44
Article 13: Right of the Victim to Complain to Competent Authorities	47
Article 14 Right of the Victim to Redress	51
Article 15: Statements made under Torture are Inadmissible	55
Article 16: Countries shall also work to Prevent Acts of Cruel, Inhumane Degrading Treatment or Punishment which do not amount to Torture	55

Introduction

1. The Human Rights Commission of the Maldives (HRCM) was first established under Presidential Decree on December 10, 2003. On August 18, 2005, the Human Rights Commission Act (6/2006) (hereinafter referred to as the Human Rights Commission Act) was ratified, thereby making HRCM the first independent and autonomous statutory body in the Maldives. The amendments brought to the Human Rights Commission Act in August 2006 broadened the mandate and powers of the HRCM, making it compliant with the Paris Principles. With the ratification of the Constitution of the Republic of the Maldives (hereinafter referred to as Constitution) in August 2008, the HRCM was made an independent and autonomous constitutional body.
2. The HRCM currently holds 'B' status with the Global Alliance of National Human Rights Institutions (GANHRI) and is an Associate Member of the Asia-Pacific Forum of National Human Rights Institutions (APF).
3. The SPT in its report after the first visit to the Maldives in 2007 recommended 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.* The broad mandate of HRCM, which supports a detention monitoring function and the provisions in its legislation is in compliance with the legal requirements of an NPM under Optional Protocol to the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment and Punishment (OPCAT). HRCM has been investigating torture cases since its establishment in 2003. In December 2007, the HRCM was designated by a Presidential Decree as the National Preventive Mechanism (NPM) under the (OPCAT).
4. As prescribed under the OPCAT, the HRCM was legislatively designated as the NPM with the ratification of the Anti-Torture Act (13/2013) (hereinafter referred to as the Anti-Torture Act) in 2013.¹ However, during this period, the lack of criminalization of torture as a specific offence in the legislative framework lead to many difficulties in preventing the crime and creating awareness among state officials and staff of places where person are deprived of their liberty.
5. With the ratification of the Anti-Torture Act, an Anti-Torture Section was established in HRCM on March 23, 2014 with the purpose of exclusively investigating torture cases identified by and lodged at HRCM.

6. This report is compiled to underline the information on the initial report submitted by Maldives under Article 19 of Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (due in 2005) on October 17, 2017. To compile this report, HRCM requested information from relevant government authorities and institutions. However, even after repeated requests, HRCM did not receive information from some key stakeholders. Furthermore, the information received by some stakeholders was extremely brief or insufficient. This report takes into account and reflects in-house data on investigations, findings from NPM visits to places where persons deprived of their liberty remain and the limited information received from main government authorities that shared information on the efforts taken to implement obligations under this convention.
7. It is important to emphasise that the initial State report submitted under this convention fell short to include sufficient information on the situation of all persons deprived of their liberty - for instance children under state care, juvenile delinquents, persons in mental health facilities and persons detained in military facilities.

ARTICLE 1 – DEFINITION OF TORTURE

Enactment of Anti-Torture Act

8. Definition of Torture is incorporated into the Anti-Torture Act. Many working to prevent torture and build awareness on the heinous crime across the globe described the Anti-Torture Act as a landmark legislation. HRCM worked to make this Act one of the most progressive torture prevention documents in this region. It is notable that this Act was passed by a unanimous vote in the People’s Majlis (the Parliament) with all the amendments proposed by HRCM.

Definition of Torture

9. According to Chapter 4 of the Anti-Torture Act any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Legislations that Prohibit and Prevent Torture

10. All forms of torture, and cruel, inhumane or degrading treatment or punishment is prohibited and outlawed by Article 54 of the Constitution. In addition, Article 57 of the Constitution guarantees freedom from torture, and cruel, inhumane or degrading treatment or punishment for persons deprived of their liberty.
11. Article 26 (b) of the Prisons and Parole Act (14/2013) (hereinafter referred to as the Prison and Parole Act) prohibits any acts of torture, inhumane or degrading treatment by prison officers. This Act also outlines the judicial proceedings for prisons and detention facilities, establish a minimum standard for such facilities, and states the categories of places of detention including police custodial, remand facilities and jails.
12. Torture is considered as a separate criminal offence under Anti-Torture Act and Penal Code (6/2014) (hereinafter referred to as the Penal Code) and the Prison and Parole Act.

ARTICLE 2 - PREVENTION OF TORTURE

13. All forms of torture, and cruel, inhumane or degrading treatment or punishment is prohibited and outlawed by the Constitution, Anti Torture Act, Penal Code and Prison and Parole Act. In addition, Chapter 2 of the Constitution guarantees all the fundamental rights necessary for the prevention of torture.
14. The Constitution, as well as the Human Rights Commission Act mandates HRCM to protect and promote human rights in the Maldives. The Human Rights Commission Act stipulates that HRCM should visit places of detention and provides HRCM with the mandate to investigate such cases and hence HRCM worked towards this goal since its establishment. The government of the Maldives appointed HRCM as the National Preventive Mechanism (NPM) under the Optional Protocol to the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (OPCAT) in December 10, 2007. Since 2008, HRCM has been working as NPM and the work of NPM was designated as a separate department in 2009. The ratification of the Anti-Torture Act in 2013 gave legal recognition to HRCM as the NPM of the Maldives and vested HRCM with the legal mandate and all the necessary powers to investigate torture allegations in the country. An Anti-Torture Section was established in HRCM on March 23, 2014 with the purpose of exclusively investigating torture cases identified by and lodged at HRCM.

15. Although there is a well formed legislative framework to prevent torture, it has been observed that the existing mechanisms established to bring those responsible to justice and prove the allegations of torture, is ineffective.

Torture Cases Investigated by HRCM

16. Since 2008, HRCM has investigated an average of more than 58 cases of alleged torture per year. From 2008 to 2017 HRCM has investigated a total of 630 alleged cases of torture. These include complaints related to arbitrary detention, search or seizure without a reasonable cause, denial of rights to legal counsel and to be informed of this right, denial of private meeting with legal counsel, right to be brought before a judge within twenty-four hours to determine the validity of detention, right not to be detained without a valid reason, delay in prosecution and investigation of allegations, denial of rights of persons charged with an offense, inhumane treatment towards arrested or detained persons and conditions of detention facilities.

Table 1: Disaggregated data on cases related to torture during the last 10 years

Year	Total number of cases	Gender		Alleged Perpetrators			Comments
		Male	Female	MCS	MPS	OTHERS	
2008	63	NA	NA	46		17	<ul style="list-style-type: none"> Perpetrator unrecorded due to lack of details. Gender not documented.
2009	31	18	17	11	20	-	
2010	45	44	1	12	33	-	
2011	37	32	5	12	25	-	
2012	105	78	11	6	99		<ul style="list-style-type: none"> Gender not documented in complaints related to protest
2013	74	64	10	14	58	2 <ul style="list-style-type: none"> K.Thulusdhoo Council MNDF 	
2014	36	33	3	26	6	4 <ul style="list-style-type: none"> 3 – IGMH 1. MoGF 	
2015	68	79	3	1	66	<ul style="list-style-type: none"> Majeedhiyya School 	
2016	47	44	3	9	37	1	
2017	82	69	13	72	10		
2018	42	42	-	14	29	4 <ul style="list-style-type: none"> 1 - PGO 2 - MNDF 1 - MoGF 	
Total	630			223	383	29	

17. Since the enactment of Anti Torture Act, a total of 275 alleged torture cases have been reported to HRCM. Investigations concluded that torture did not occur in 110 of the reported cases. Of the remaining cases, 97 were closed without prosecution due to insufficient evidence, 38 cases had to be closed due to lack of cooperation from the parties involved in the cases and in 14 cases investigation is still on-going.

Table 2: Disaggregated data on cases related to torture since Anti Torture Act came into effect

Year	Number of complaints	Cases investigated	Suspected cases of torture	Allegations of torture not proved	Cases closed due to lack of evidence	Cases closed due to lack of cooperation from parties involved	Cases sent for prosecution	Investigation ongoing cases
2014 - 2018	275	261	2	110	97	38	1	14

18. So far HRCM has forwarded four cases of torture for prosecution, out of which three has been reverted back to HRCM for further investigation as the existing evidence was not sufficient for prosecution. The remaining case - forwarded in 2016 - is still in trial stage at the Criminal Court of Maldives.

Deaths at Places where Persons Are Deprived of their Liberty

19. HRCM investigates all cases related to deaths of persons deprived of their liberty. Table 3 illustrates the cases of deaths at places where persons are deprived of their liberty that HRCM has investigated from 2008 till September 2018.

Table 3: Disaggregated data for the last 10 years, on deaths at places where persons are deprived of their liberty

Year	Total number of cases	Gender		Perpetrator			Comments
		Male	Female	MCS	MPS	OTHERS	
2008	0						
2009	0						
2010	3	3			3		2 natural deaths 1 investigation on-going,
2011	0						

2012	1	1	0	0	1		Natural death
2013	1	0	1	1	0	0	Natural death
2014	0						
2015	3	3		3			3 natural deaths
2016	6	6	0	4	1	1	4 natural deaths 2 investigation on-going,
2017	6	4	1	6	0	0	3 natural deaths 3 investigation on-going,
2018	3	3	0	3	0	0	3 investigation on-going,
Total	23	20	2	17	5	1	

Torture during State of Emergency

20. During the State of Emergency declared in 2018, the rights at the time of arrest and detention granted to every Maldivian citizen under Article 48 of the Constitution was withheld. The decision to declare the State of Emergency was upheld by the Supreme Court of the Maldives. MPS arrested many high-profile figures including the Former President Maumoon Abdul Gayoom, the then Acting Commissioner of Police Ahmed Areef and 3 Justices of the Supreme Court of the Maldives as well as some parliament members and people who tried to protest during the State of Emergency. The victims in these cases were brought in front of a judge only at a time when the state of emergency was due to expire. HRCM visited the victims in their detention centres, and made sure they were being granted the essential rights they were entitled to while also diligently checking the material conditions of the places where they were being held and making sure they were up to par. HRCM has received complaints regarding torture during both State of Emergencies of the past five years (2015 and 2018) and have investigated the allegations.

Table 4: Number of torture cases lodged during state of emergency declared on 5 February 2018

Number of cases	Type of torture					Gender		Perpetrator		
	Physical torture during arrest	Physical torture during protests	Physical torture in custody	Psychological torture in custody	Inhumane treatment	M	F	MPS	MCS	MNDF
17	3	6	0	2	6	17		15		2

Torture and Inhumane Treatment at Places of Detention

21. Article 22 of the Human Rights Commission Act and Anti-Torture Act vests HRCM the power to inquire into and investigate complaints on infringement of human rights, or foreseeable infringements of human rights of a person or persons filed at the HRCM by a person or persons, or a representative acting on their behalf. HRCM has been investigating allegations of torture, inhumane or degrading treatment or punishment and in these investigations, HRCM has been conducting visits, where necessary, to places of detention related to the allegations reported.
22. Since its establishment in 2007, NPM has conducted regular visits to all the facilities under state care where there are persons deprived of their liberty. During these visits, NPM has observed that while the material conditions of these facilities had improved significantly over the years, complaints about the allegations of torture still remain prevalent. These complaints are highlighted during the stakeholder meetings NPM holds with these institutions and in NPM's visit reports which are published in HRCM website. Moreover, NPM also does regular monitoring to gauge the progress made on the recommendations issued to the facilities. In addition, complaints of alleged torture received during NPM visits are further investigated by HRCM.
23. Visit reports of NPM to places of detention and other state institutions where persons are deprived of their liberty observe that periods of pre-trial detention are often lengthy, and detainees are kept in custody without judicial review for prolonged periods of time.
24. The prison unit specialized for male juvenile delinquents, is located on the grounds of Asseyri Prison (the prison specialized for prisoners eligible for parole and those counting the last days of their sentence and partaking in reintegration programs). During NPM's visit to this prison in 2016, it was observed that the material conditions of the unit where juvenile delinquents were held was poor. Additionally, it was also observed that all the juvenile delinquents in detention were accommodated in one single accommodation cell, with no segregation of these detainees according to the crimes they had committed. Moreover, the prison lacked a specific local order or a regulation for the administration of disciplinary action against juvenile delinquents.
25. Dhoonidhoo Police Custodial (the largest pre-trial detention facility in the country), does not have a unit specialized for juvenile delinquents. At present, male juvenile delinquents are held in a separate cell within the unit for adult males. Similarly, there are no separate detention facilities or units specialized for placement of female juvenile delinquents. However, cells are established at both Maafushi Prison (the largest prison facility in the

country) and Dhoonidhoo Police Custodial to hold female juvenile delinquents. Maafushi Prison has a single prison cell to accommodate female juvenile delinquents, while Dhoonidhoo Police Custodial has two detention cells specialized to accommodate female juvenile delinquents. HRCM notes that these cells are located within the unit that holds female adult detainees. It was observed that a cloth curtain was used as the toilet door and these cells were very dark even during the day.

26. The Male' Custodial, Male' Prison, Hulhumale' Detention Centre and the Police Stations in atolls also do not have a separate unit or a cell for juvenile delinquents.

27. The Home for People with Special Needs (HPSN) lacks a separate unit/ward for children. Since the establishment of the centre, underage girls are kept together with adult female patients with psychiatric disorders. During a monitoring visit to the facility in 2016, it was noted that there were two boys under the age of 18, accommodated in separate rooms. However, it is important to note that while the sleeping arrangements were separated, the children were not prevented from accessing the units where adult patients with psychiatric disorders were accommodated. Moreover, with infrastructural changes that took place in 2017, the male children were transferred to wards where patients with severe psychiatric disorders were kept.

28. While family visits and lawyer visits are provided according to the regulations of respective detention facilities, during the visit to Maafushi Prison in 2012, NPM identified that both the detainees and visitors were strip searched before and after family visits. HRCM has put forth a recommendation to MCS to review the prison local order governing the administration of strip searches. Complaints of unreasonable strip searches are still notified during visits to police stations, police custodial and prison visits. Some detainees were also strip searched at the time of arrest without a reasonable cause. In 2016, female journalists arrested while covering protests reported that they were subjected to unnecessary strip searches when brought to Male' Custodial.

Children under State Care who are subjected to Torture

29. According to information provided by Ministry of Gender and Family to HRCM for the Anti-Torture Report 2018, there have been incidents of physical, sexual and psychological abuse faced by children under State care. Documents show that during 2017 and 2018, at least 10 staff working at 3 centres were investigated for sexual abuse, physical abuse, psychological abuse, neglect and verbal abuse and they were suspended or terminated from employment. The perpetrators of these cases include a child care supervisor, child care workers, health officer, security officers and other staff working at the facilities. However, these abuses did

not come to the attention of HRCM in its monitoring visits, and the cases were not forwarded or referred to HRCM by any party.

30. During the last three years HRCM has investigated 11 alleged cases where children under State care were subjected to torture. However, none of these cases have been forwarded for prosecution due to insufficient evidence.

Table 4: Alleged cases where children under State care were subjected to torture investigated by HRCM

Year	Total number of cases	Gender		Perpetrator			Comments
		Male	Female	MCS	MPS	OTHERS	
2015	3	3			3		
2016	6	3	3		1	5	
2017	2				1	1	Gender not documented

Treatment of Migrant Workers at Detention Facilities

31. During an NPM visits to Hulhumale’ Detention Centre (the detention centre which holds foreigners whose permits have been revoked and holds local prisoners serving lighter sentences) it was found that migrant detainees were denied the rights guaranteed by the Constitution at the time of arrest, making their detention arbitrary. The migrant detainees who violated immigration laws are arrested without a court order and are not given the right to represent their case in a court of law. Their detention was ordered by the Controller of Immigration and they are held until their deportation arrangements are settled by the State authorities. The treatment afforded to these detainees at the Hulhumale’ Detention Centre is often poor and discriminatory as opposed to the facilities and services offered to the local detainees.
32. Migrant detainees remain in this Centre for months due to the long deportation process. NPM observed that interpreters were not provided even though all documents remain in Dhivehi. Since a large population of migrant detainees do not understand Dhivehi or English the migrant detainees who understand Dhivehi helped in communication, as the officers at the Centre do not understand their language.

Rights at the Time of Arrest

33. During the initial NPM monitoring visits, it was observed that the detention facilities lacked a proper mechanism to inform detainees of their rights at the time of arrest. However, with the recommendations put forth by NPM over the years it has been observed that a detainee's information package containing the personal information of the detainee, rights at the time of arrest, conduct during detention, administration of disciplinary measures and health screening was developed. Even though the consent form informing detainees of their rights at the time of arrest is signed by the detainee, some detainees have complained that they were not given enough time to read the document and a copy of the document is not provided to the detainee but is kept in their personal file and the system logs.
34. All the documents and regulations maintained in the detention facilities are developed in Dhivehi language, including the rights at the time of arrest. There are no interpreters in any of the facilities and usually detainees sharing the cells and sometimes foreigners working in the facilities who understand Dhivehi help in the interpretation of the documents to foreigners who are detained. However, information regarding the interpretation process is not documented in most of the stations and the custodial facilities. The NPM was informed from custodial facilities that when foreigners are detained, the facilities seek help from the respective foreign embassies for interpreters and it was observed that in instances where, the service of interpreters is provided, the information is documented in the detention facilities.
35. NPM has developed a booklet and a poster stating the rights at the time of arrest as stipulated under Article 48 of the Constitution and this was translated into 10 languages. This activity was carried out from the grants NPM received in 2012 from the OPCAT Special Fund. These booklets and posters were distributed to all the detention facilities within the country and are disseminated to foreigners in the activities carried out by HRCM on several occasions. HRCM also distributes these booklets and posters in their visits to the facilities. NPM has put forward recommendations to display these materials in the facilities where the detainees have easy access to them.

Furthermore, HRCM has developed a migrant worker's information card with the assistance of International Organisation for Migrants (IOM) which includes information regarding rights of migrant workers and the contact numbers and address of places where they can go in case they require assistance.

Excessive Use of Force

36. Paragraph 59 of the State Report says that ‘the Maldives is committed in its efforts to ensure that appropriate guidelines on the use of force is respected and that the law enforcement and correctional officials adhere to and observe the prohibitions against torture and other forms of abuse’. However, HRCM has received 27 complaints related to excessive use of force by law enforcement officials within the last 10 years.

37. Series of demonstrations held from January 16 to February 6, 2012 following the unlawful arrest of Chief Judge of Criminal Court Uz. Abdulla Mohamed were monitored by HRCM. The following highlights the observations of HRCM.

- a) Use of force by MPS was found to be inconsistent and especially discriminatory towards some people based on political affiliations.*
- b) Disproportionate and unnecessary force was used by MPS when dispersing demonstrations.*
- c) Some detained demonstrators were tortured at the time of arrest, and this was validated by visible signs on their body observed by HRCM officials.*
- d) Contrary to the Police Act (5/2008) (hereinafter referred to as the Police Act), female protesters were handled and arrested by male police officers.*
- e) On some occasions HRCM officials were denied access to detainees.*
- f) Some detained demonstrators informed that they were tortured by MNDF officials at the time of arrest, and this was validated by visible signs on their body observed by HRCM officials.*
- g) Excessive, unnecessary and disproportionate use of pepper spray on protestors was observed by HRCM.*

38. The march of MDP protestors towards the Republic Square on February 8, 2012 came to a halt, when riot police stopped them near Maldives Monetary Authority building and sprayed tear gas into the crowd, without prior warning. Although, it was at the entry to a restricted area to have assemblies under the Regulation on Assemblies, HRCM found that the police action taken in dispersing the protesters was unnecessary and disproportionate. Many of the demonstrators were baton charged indiscriminately, and pepper sprayed unnecessarily and disproportionately, resulting in increased number of injuries among the protestors. A

number of protesters were also taken into police custody at the Dhoonidhoo Detention Centre. HRCM conducted an investigation on the events of that day. The following are the findings of the investigation of which a report was shared with relevant authorities on 28th May 2012:

- a) *The HRCM's investigation into the events of February 8, 2012 is conclusive of the fact that police used excessive, unnecessary, disproportionate force in dispersing the demonstrators.*
- b) *The HRCM notes that the actions of the protesters did not reach the level of those to be restrained using less lethal weapons as stated in the Article 14 of the Police Act. However, it was noted that the protesters including those who did not resist being arrested or those who were not a threat to the Police or a civilian, were all controlled using batons and tear gas.*
- c) *According to the Article 10 (a), (b) and (c) of the Regulation on Use of Force and Firearms, protesters should be warned before weapons are used to give sufficient time to disperse. It was noted that while the protesters were advised by police before they disperse the crowd, they were not given enough time to leave the area nor were they given the warning that force and weapons will be used to disperse them. In addition to this, even though Article 10 (4) of this regulation states that if the situation is such that the Police have to use force and weapons to disperse protesters without giving them prior warning, the HRCM is of the opinion that the circumstances did not warrant that the Police disperse the crowd without prior warning.*
- d) *HRCM notes that the MPS responded with physically and mentally harmful force towards some political activists who did not show any resistance. Although the Police Act states that female arrestees should be handled by female police officers, it was noted that a disproportionate number of male officers were involved in arresting female protesters in ways which were not only mentally and physically harmful but also degrading.*

Arbitrary Detention, Arrest or Imprisonment

39. Article 45 of the Constitution prohibits arbitrary detention, arrest or imprisonment. Nonetheless, HRCM has observed that arbitrary detentions and arrests are a persisting issue. Article 4 under Chapter 2 of the Prison and Parole 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 this 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. Currently remand detainees are kept in specific units, but in some instances they are housed in cells within the units where convicted prisoners are kept, and hence, there still lacks the segregation the Prison and Parole Act envisages, making their detention arbitrary.

40. Article 142 of the Prison and Parole 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 by Controller of Immigration under the Maldives Immigration Act (1/2007) (hereinafter referred to as the Maldives Immigration Act) until they are deported. Contrary to this Article, migrants are being detained at Hulhumale' Detention Centre established by Minister of Home Affairs without the stated regulation in place.
41. Following a fire incident in the Maafushi Prison in 2009, a temporary prison was facility built by Maldives National Defence Force (MNDF) in S. Gan and prisoners from both Maafushi Prison and Asseyri Prison were transferred to this facility. NPM visit to this facility in 2009, observed that the prison was managed by MNDF, which was in contravention to national legislative frameworks, international best practices and customary law on human rights which clearly discourages management of prisons by the military. Further, it was observed that the prisoners were kept in cells made of metal rods that looked like cages, prisoners were denied any contact with the outside world and were treated inhumanely. The issues were highlighted in the visit report of 22nd November 2009. Following this visit, NPM recommended that the administration of the facility be transferred to the Department of Penitentiary and Rehabilitation Services (currently MCS) in accordance with the then Prison Regulation. HRCM met with the then Vice President, and the government assured that the recommendations put forward by HRCM will be implemented expeditiously. The government closed down the prison facility in February 2010 and moved the prisoners back to Maafushi Prison.
42. Persons held in remand units in Maafushi Prison are held in custody for prolonged periods and their trials pend for years. Some of the female detainees held in the female remand units have informed officers of NPM that they find it difficult to call and be in contact with lawyers. It is also observed that many remand prisoners are being kept in police custody even after the investigation of their case is concluded and the case is sent for prosecution.
43. Foreigners among the Maafushi Prison remand detainees are not given the opportunity to contact their families abroad as the prison administration has amended their regulation

stating that the phone calls can only be given to locally registered phone numbers. Many foreign prisoners state that this negatively affects their possibility to defend themselves through legal counsel as contact with family assists the detainee and lawyer cooperation.

44. On January 16, 2012, the unlawful arrest and secret detention, by the military, of the Chief Judge of the Criminal Court Uz. Abdulla Mohamed was a clear violation of the rights specified in the ICCPR and those stipulated in the Constitution. The following are the findings of HRCM's investigation in to the arrest and detention of Uz. Abdullah Mohamed;

- a) *It is conclusive to the investigation that the then President and the Minister for Defense and National Security has to take the responsibility for arbitrary arrest and detention of the Chief Judge.*
- b) *It is conclusive that it was the orders of the President to arrest Chief Judge as there was no action taken against MNDF for disobedience to the orders of the Courts.*
- c) *As stated in the Article 159 of the Constitution, investigating and taking action against judges are the mandate of JSC, it is conclusive that attempting to forcing the resignation of Chief Judge while detained by MNDF is in violation of Article 115 (c) of the Constitution on promoting the rule of law, and to protecting the rights and freedoms of all people.*

45. The President Abdulla Yameen Abdul Gayoom (then the leader of the People's Alliance and Member of Parliament) was arrested by MNDF on July 15th, 2010. Criminal Court ordered MNDF to present President Yameen to court on July 15th, 2010, which the government and the military did not abide. The PGO and HRCM stated that the arrest of President Yameen was unlawful. On August 25, 2010, Civil Court ruled that MNDF does not have the power to withhold the civil rights of President Yameen. On 16 August 2011, the Civil Court ruled that President Yameen to be compensated with MVR 244,031.25 (USD 15,825.64) and Maldives Police Service to pay the compensation.

Health and Wellbeing of Persons Deprived of their Liberty

46. Upon admission to the places of detention, a medical screening of all detainees are carried out by a qualified nurse stationed at detention facilities and those who require immediate or special treatment are transferred to the health centres, regional/atoll hospitals, and the tertiary hospital, Indhira Gandhi Memorial Hospital (IGMH) or private hospitals located in Male'. However, the health screening and treatment are not properly documented in all the

centres. Although most detention centres, except police stations, have nurses on duty or on call requests by detainees for medical consultation are not attended to within 24 hours and it is observed that some of the prescribed medicine are not available in detention facilities. HRCM received complaints from persons held at detention centres regarding the medical aid provided in these facilities and the complaints range from not having access to medical specialists, late follow-ups and delays in laboratory tests.

47. Requests for medical examination by a doctor other than the doctor in the detention centres are fulfilled most of the time, but usually it takes a lot of time to make the necessary arrangements. It was also observed, from the review of medical documents, that there were many prisoners on waitlist for dermatology, dental, ophthalmological, orthopaedic and cardiac issues. In addition, it had come to the attention of the HRCM that a pregnant woman imprisoned in the female unit of Maafushi Prison, who was referred for consultation by a gynaecologist on October 14th 2017 had not been taken for consultation even when NPM visited the prison in December 4th 2017.
48. Although section 69 of the Prison and Parole Act ensures that the basic necessities be provided to all convicts. However, in some cases these necessities are not provided to the universally accepted best standards of practice. For instances, while persons deprived of their liberty are supposed to be provided with nutritionally adequate food and water from a source approved by a government agency, it is questionable whether the accepted standard is followed in all detention facilities. It has been observed by HRCM that the food provided in some of the centres is not fresh and that the vegetarians are not provided with vegetarian meals.
49. HRCM found that some detainees in detention facilities are being deprived of the opportunity for walking and exercising as granted under Prison and Parole Act. In addition, some detainees in Dhoonidhoo have complained that they are hand cuffed when they are taken outside their cell for exercise. Furthermore, HRCM found that some detainees in some of the detention facilities only get the opportunity to go out of their cells for medical needs or when they are given the opportunity to make a phone call.
50. Prisoners have to get a referral from the in-house doctor if they desire to consult doctors from other medical facilities. However, this remains a cumbersome task and takes a long time to actualise. Furthermore, when their families make arrangements for consultation at their own cost, the prison administration has often failed to escort them for their consultation due to staff shortage and other difficulties.

51. The medical centre established at Maafushi Prison was not registered in the list of medical centres at the Ministry of Health until June 2018. The Maafushi Medical Unit operates with 7 non-medical staff, 2 doctors, 9 male nurses and 2 female nurses.
52. During NPM's visit to Maafushi Prison in 2017, NPM observed that there were 54 prisoners on psychiatric medication. According to NPM observations, a psychiatrist associated with NDA visited the prison facility twice every month and prescribed medications for 3 months. However, it has been observed that the medical staff had difficulties acquiring the prescribed medicine due to lack of availability of controlled drugs.
53. NPM observed that there were prisoners with severe skin conditions which has the potential to become epidemic within the dormitories and could be potentially life threatening if left untreated. Similar issues are observed during NPM's visits to the custodial and other detention facilities. Similarly, issues related to dental issues are also wide spread within the detention facilities.
54. During a visit to Maafushi Prison in 2017, NPM observed that there were five prisoners diagnosed with tuberculosis in the facility. Upon further inquiry, NPM observed that the Health Protection Agency (HPA) has administered tuberculosis tests for both prisoners and staff in early 2016 and 2017 on the request of the prison administration, the results of these tests were never shared with either the prisoners or the staff.

Conditions of Detention Facilities

55. During NPM visits to detention facilities it was observed that most of the places were overcrowded and understaffed. All detention facilities are observed to have poor ventilation leading to extreme heat within the cells. In addition, some detention centres have inadequate natural lighting.
56. While Maafushi Prison has the capacity of less than 700, the population there sometimes goes up to over 1000 people. Some of the cells were observed to be poorly ventilated, are extremely hot and in some of the cells the toilets do not have doors.
57. Male' Prison is overcrowded and some cells have inadequate natural lighting and cross-ventilation. There is no open space or yard for walk or exercise in the prison. There are no family or conjugal visit rooms and as a result, prisoners from this prison are taken to Maafushi Prison for conjugal visits. NPM has recommended that the units that lack cross ventilation and lighting be changed in accordance with the Nelson Mandela Rules. NPM has also

recommended bringing changes to the infrastructure in order to improve the material conditions of the facility.

58. It was observed that the lighting and cross ventilation of some of the units in Dhoonidhoo Police Custodial and Male' Police Custodial, were inadequate and that in some units the conditions of the toilets were unhygienic and had inadequate lighting. In Male' Police Custodial, one of the cells had been designed in such a way that it does not have adequate cover from rain, or sun, is very hot and does not have adequate cross-ventilation. Several recommendations have been put forward to address these issues but none had been implemented due to budgetary constraints. However, it is noteworthy that the conditions of the cell mentioned in the Male' Custodial had been improved.
59. It is observed that the cells in atoll police stations are in better condition than the two main custodial facilities in Male' and Dhoonidhoo. However, HRCM has observed that some atoll police stations are being run in rented houses and hence they face difficulties in bringing necessary changes to the infrastructure.
60. Some units in the Hulhumale' Detention Centre have poor lighting and cross ventilation. Additionally, some of the cells are observed to have inadequate and the number of toilets in relation to the population they detain. Moreover, overcrowding was observed in all the cells in the facility. Recommendations are put forward to address these issues but the response from the authorities is that the recommendations cannot be implemented due to budgetary constraints.
61. During a visit to Maafushi Prison in 2017, NPM observed that some suspects were held in the remand cells in the same units that detained convicted felons. It was concerning to find that the same procedures were followed in dealing with arrangements and services for remand detainees and convicts, and that detainees remain in remand for prolonged periods while their trials pend over a year.
62. While detainees in all the custodial and police stations are given the opportunity to pray, recite Quran, and observe fast, prisoners are not provided food for *suhr* (pre-dawn meal) if they fast in months other than Ramadan and they have to save their dinner for *suhr*. Additionally, it was observed that due to overcrowding in Male' Prison, prisoners face difficulties in performing daily prayers.

Vocational Opportunities for Prisoners

63. Section 22 of the Prison and Parole Act obligates the State to set professional standards and to ensure that the prison system adheres to these standards. The Act also states that convicts should be provided with opportunities to learn and enhance skills and education in different areas. Although these standards are now reflected in prison regulations and local orders, there exist many issues in the implementation of these standards.
64. NPM observed that many prisoners serving their sentence in the Maafushi Prison and Asseyri Prison are engaged in different vocational programs such as gardening, carpentry, arts and craft work, engineering and wiring programs as well as English and Dhivehi language courses, Islamic studies and computer education programs. Furthermore, some detainees were given the opportunity to sit for local Dhivehi and Islam Ordinary Level Examinations. However, it is also a finding by NPM that the number of prisoners given the opportunity to partake in these programs is low compared to the prison population. Additionally, NPM observed that prisoners held in medium and high security units are not given the opportunity to engage in the educational programs or employment opportunities.

Documentation at Places of Detention

65. Lack of proper documentation of persons taken into police custody and places of detention is a concerning issue for the HRCM. Very often, required information such as information about the officer involved in the arrest is missing in arrestee forms. In addition, documentation of people taken in to police custody for less than 24 hours is not recorded. Moreover, some of the information in the individual files of the detainees is incomplete. Additionally, It has also been observed during an NPM visit to Hulhumale' Detention Centre that documentation files are not stored in a safe and secure manner. Furthermore, separate folders are not made for individual detainees and all the medical records of detainees are kept in one folder.

Grievance Mechanism at Detention Facilities

66. The Director of Prisons is mandated by law to address the complaints lodged by prisoners and provide an answer within at least 5 days. While all prisons have a complaints mechanism, a proper grievance mechanism is not established in custodial facilities and there is no written procedure about how a complaint can be lodged and investigated in these facilities. As such, in some police custodial, detainees are provided a pen and paper if they want to file a complaint while in others complaints are lodged verbally to officers.

Recommendation

- 1. Ensure that the legislative framework developed for the prohibition and prevention of all forms of torture and other cruel, inhumane or degrading treatment or punishment is in line with international laws and standards.**
- 2. Ensure full and effective implementation of all fundamental principles stated in the national legislative framework, the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT), Optional Protocol to the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (OPCAT) and the Nelson Mandela Rules.**
- 3. Reduce pre-trial detention and review the existing practices of law enforcement to find alternatives to pre-trial detention.**
- 4. Allocate adequate resources, sufficient budget and trained staff and improve the conditions of places where persons are deprived of their liberty to ensure the full implementation of the standards set in Prison and Parole Act, Anti-torture Act and the Nelson Mandela Rules.**
- 5. Establish a mechanism to ensure access to healthcare is guaranteed to all persons deprived of their liberty.**
- 6. Strengthen the existing mechanism to investigate and take necessary action against law enforcement officers who commit acts of torture without affording them impunity.**
- 7. Review the existing training programs given to law enforcement officials to ensure that they are in line with international best practices and human rights standards.**
- 8. Disseminate information and raise awareness on the rights and responsibilities with regard to freedom of assembly.**
- 9. Take effective measures to avoid incidents of arbitrary arrest and afford compensation to victims of arbitrary arrest.**

ARTICLE 3: NON-REFOULEMENT

Legislative Standards

67. The provision on non-refoulement is encompassed into the national legislative standards. The Article 54 of the Constitution stipulates that no person shall be subjected to cruel, inhumane or degrading treatment or punishment, or torture. Similarly, the Article 42(a) of Anti-Torture Act prohibits sending, handing over or deporting a person to the relevant country, if relevant Maldivian authorities have evidence that shows that there is fear that a person might be subjected to torture. Moreover, Article 39 and 41 of Anti-Torture Act outlines measures to be taken to extradite a person, who has committed an act of torture abroad is currently in the territory of Maldives, and jurisdiction in cases where extradition is governed by existing agreements, respectively. In both these circumstances extradition is prohibited under Article 42(c) of Anti-Torture Act if relevant Maldivian authorities have evidence that to suggest the fear that the person might be subjected to torture. It is noteworthy to mention that, if the country in question has a record of human rights abuses and a culture of disrespect to human rights, Article 42(a) of this Act considers this as evidence to prove the person is under threat of torture upon returning.

Expulsion, Removal or Refoulement of Persons

68. According to article 20 of the Maldives Immigration Act, the Controller of Immigration has the discretion, with or without notification, to revoke a permit given to foreign nationals. The four circumstances where the revocation of permit include: false or untrue information provided during the application of permit, the foreign national who was granted a permit comes under a category of people who are not allowed entry into the country, the reason or circumstance for the granting of a permit is no longer valid and foreign national who was granted a permit violated laws or regulations of the Maldives. Additionally, Article 21 states that, it is not permitted for such a foreigner to remain in the country once the permission to stay is revoked and Controller of Immigration can make arrangements to accommodate (in-effect detain) the foreign national.

69. Subsection (b) under Section 21 of the Prison & Parole Act defines the detention facilities for foreigners detained for removal purposes. Periodic visits by NPM to Hulhumale' Detention Centre found that undocumented migrant workers held in prolonged administrative detention were denied fundamental rights entitled under Article 48 of the Constitution which guarantees fundamental rights on arrests and detention. While the detention of non-documented migrant workers who violated the Maldives Immigration Act was carried out to facilitate the process of deportation, their prolonged detention was mainly due to delay faced in identification process of non-documented migrant workers which was usually

carried out with the assistance provided by respective embassies/consular offices. NPM has made 47 recommendations from the eight visits conducted to the Hulhumale' Detention Centre since its establishment in 2013. It is regrettable to note that Maldives Immigration refused to attend meetings scheduled to discuss the issues identified, thus there is little or no progress on the implementation of these recommendations.

70. Article 8 and 29 the Maldives Immigration Act deals with inadmissible passengers. The regulatory framework for proceedings to detention and removal of inadmissible passengers is outlined in the Maldives Air Entry Regulation (2010/R-4) and in the Maldives Sea Entry Regulation (2010/R-8). Similarly, Annex 9 of International Civil Aviation Organization (ICAO) also guides the removal process of inadmissible passengers by air. During forcible removal of inadmissible passengers, special consideration was given to comply with the principle of non-refoulement by Maldives Immigration. In this regard, Maldives Immigration carried out two successful third country resettlements. These include resettlement of four Palestinian refugees in Sweden in 2013 with the assistance of United Nations High Commissioner for Refugees (UNHCR) and International Organization for Migration (IOM), and a resettlement of a Syrian national in Canada in 2015 with the assistance of UNHCR.
71. HRCM investigated one case of refoulement in the past. Specifics of the case are as follows: in 2016, an Iranian national musician lodged a case to HRCM stating that he is being deported back to Iran for violating Immigration law, and he feared that he would be captured and tortured as he had published songs on YouTube vocalizing against the Iranian Government. He was deported despite the fact that HRCM worked to halt the decision to deport him and communicated concerns with relevant authorities.

Extradition

72. While extradition is to be administered as per the provisions of the Anti-Torture Act, the transfer of accused and convicted persons between the Maldives and other countries is governed by the Extradition Act (1/2015) (hereinafter referred to as the Extradition Act) Transfer of Prisoners Act (38/2014) and Mutual Legal Assistance on Criminal Matters Act (2014).
73. Providentially, with the ratification of Extradition Act, all extradition cases are to be reviewed at High Court, provided that the country requesting for extradition is one that is on the list of permitted countries to extradite under this Act. Article 26 of the Extradition Act outlines the mandatory criteria that must be fulfilled for an extradition to take place. In addition to this, the type of crime that the accused committed must be one of the crimes stated in this

Act. The accused must also have consented to this extradition and all the relevant documents stated in Section 15 of the Act must be present.

74. Pertaining to the aforementioned list of permitted countries, it is imperative to note that Article 11 of the Extradition Act specifies list of countries that convicts can be extradited to. Additionally, Article 34 of this Act, permits convicts to be extradited to list of countries published in the gazette. Ministry of Foreign Affairs is mandated to inform the People's Majlis within 14 days following publication of a declaration that permits convicts to be extradited to a country. Maldivian authorities do not maintain a list of safe countries for transfer and so far Maldives has signed extradition agreements with two countries and this list has not yet been published in the gazette.

Review of Decisions on non-refoulement

75. Article 23 of Extradition Act states that, the High Court should hold court proceedings to rule on the extradition request provided the fact that the Prosecutor General allows for the request of the foreign countries to be processed and the person subject to the request of extradition refuses to be extradited. Article 28 of the Extradition Act provides for PGO to issue an order to extradite a person, subsequent to the decision made by High Court of the Maldives. Additionally, the person subjected for extradition has the right to appeal the decision of the High Court of the Maldives at the Supreme Court of the Maldives and the PGO makes a final decision on extradition if the decision to extradite a person is upheld by the Supreme Court of the Maldives of Maldives. Article 29 states that, the Prosecutor General will make the final extradition order once all the judicial stages are completed. It is substantial to note that the Prosecutor General has the discretion to decide not to extradite the person based on various ground, including evidence that shows that the person would be subjected to torture if extradited. Moreover, pursuant to Article 31 of the Extradition Act, if the person was not extradited within two months from the time the decision was made by the High Court of Maldives to extradite a person, the person can apply to the High Court of Maldives to issue an order for his/her discharge. Additionally, the court shall issue an order to release the person subjected for the extradition, if the court is not convinced that the applicant was not extradited due to a sufficient cause.

76. As per Article 6 of the Extradition Act, if the country requesting extradition has entered into an extradition treaty with the Maldives, a determination for extradition can be made for the offences agreed between by the two countries under the extradition treaty. Extraditable offences for the countries that have not entered into an extradition treaty with the Maldives are detailed in Article 13 of Extradition Act as offences which carry a minimum sentence of at least one year of imprisonment or detention or a higher sentence under Maldivian law

and laws of the country requesting an extradition. Correspondingly, a sentence which carry a minimum sentence of at least one year of imprisonment or detention or a higher sentence under the Maldivian law and remaining portion of the sentence is at least 6 months or more. Moreover, it is not necessary for such offences to be identical to the rank or language or category or act or elements in both jurisdictions. It is important to note that all these circumstances need to be considered when making a determination of the aforementioned extraditable offences. An additional extraditable offence specified under Article 13 this Act is tax and import duty offences under the Maldivian law that are similar to corresponding offences under the country requesting extradition. This article further states that extradition can be allowed for a person with multiple offences or charges, provided the fact that at least one of the offences is an extraditable offence under the Extradition Act.

Non-refoulement Provisions on Terrorism, Emergency Situations, National Security or other grounds

77. While Article 16 (b) of the Anti-Torture Act stipulates that war, political unrest, public order situations due to increase in crime or public emergencies are not a defence to commit to torture, cruel, inhumane or degradation treatment against any person. Conversely, Maldives does not have any codified law on terrorism, emergency situations, national security or other grounds related to non-refoulement. Also significant to note that there are exceptional cases in which the State would not allow extradition. In this regard, the 7 instances where a person cannot be extradited from Maldives under Article 14 of the Extradition Act (1/2015) comprises of (a) if the offence is a political crime; (b) if there is adequate evidence to believe that the person will be persecuted or punished based on his/her race, gender, religion, nationality or political ideology; (c) if it is believed that the person may be discriminated at his/her trial based on his/her race, gender, religion, nationality or political ideology; (d) if his action or inaction is an offence under a military Act of the Maldives but not a general criminal offence; (e) if a country is requesting his extradition on an offence for which he/she has already completed the sentence handed over by the last judicial process of the Maldives or another country; (f) if the offence against him cannot be tried at a court of law due to passage of time or another reason and (g) if the court proceedings, for the offence against him, had been completed and he/she has been declared innocent or has completed his sentence or had his sentence commuted under the laws of the Maldives or the country requesting extradition.

Acceptance on Diplomatic Guarantees

78. While the Anti-Torture Act guarantees non-refoulement, it does not provide specific information or guidance about accepting diplomatic guarantees as to the treatment of

returned persons. The Extradition Act does not provide explicit directions about diplomatic guarantees under the provision of non-refoulement. However, this Act gives discretion to the PGO, with whom the ultimate authority to grant or deny extradition under a number of circumstances which includes where the requesting state has not given guarantees with regard to the person sought or if an agreement between the Maldives and the state requesting extradition does not include such a clause.

Establishment of Regulations

79. The relevant authorities that makes a collective decision on refoulement issue are outlined in Article 42(b) of Anti-Torture Act as the ministry that formulate foreign policy, ministry that formulate domestic policy, Attorney General's Office, Human Rights Commission of the Maldives, Department of Immigration and Emigration, the government institution carrying out the functions related to migrant workers. However, if aforementioned authorities determine there is no adequate evidence of a threat or fear of torture by a unanimous or majority decision, then the person will lose protection granted under Article 42(b) and subsequent to which the person will face either extradition or deportation.
80. According to Article 42(d) of Anti-Torture Act, Human Rights Commission of the Maldives should make regulations as how to treat a person who is deported to another country, while he/she is kept in the Maldives and the protection that should be given to him/her. Additionally, Article 46 of Anti-Torture Act specifies that regulations required to implement and enforce this Act should be made by the HRCM, in partnership with the Attorney General and human rights NGOs and it should be published and implemented within six months of this Act coming into effect. HRCM is working on drafting the regulation that needs to be published under Article 42 (d) of Anti-Torture Act. So far, first draft of regulation has been shared with Ministry of Home Affairs, AGO, Maldives Immigration and Ministry of Economic Development.
81. Maldives Immigration informed that they participate in international conferences to gain awareness in returns and reintegration of inadmissible persons. Additionally, all immigration officers receive a mandatory training on handling inadmissible passengers.

Recommendations

- 1. Establish a standard to facilitate interpretation without discrimination of any kind, including race, national origin, colour, sex, age, mental or physical disability, political or other opinion, property, birth or other status, or native island to all and disseminate**

information in a language the individual understands both orally and in writing. The standard should incorporate all decisions made in relation to the individual.

- 2. Establish a procedure to conduct one to one interviews by competent persons trained on the provision of non-refoulement.**
- 3. Adopt comprehensive legislative and administrative codes that accommodates the evidence by the individual subjected for expulsion, deportation or transfer while sanctioning adequate time to review the individual case.**

ARTICLE 4: TORTURE AS A CRIMINAL OFFENCE

82. Article 54 of the Constitution stipulates that “no person shall be subjected to cruel, inhumane or degrading treatment or punishment or to torture”. With the endorsement of Anti-Torture Act in 2013, all acts of torture, attempts to commit torture, and complicity or participation in torture within the jurisdiction of Maldives are punishable offences. The Anti-Torture Act states that the Act shall take precedence over all other legislations which criminalize torture related offences or legislations which are in conflict with the Act. The Act vests HRCM with the power and responsibility to take measure to prevent torture and to monitor, investigate and bring those who responsible to justice. Additionally, torture is prohibited by Article 26 (b) of the Prisons and Parole Act prohibits any acts of torture, inhumane or degrading treatment by prison officers.
83. Since the Anti-Torture Act came into effect, till July 2018, HRCM has investigated 223 torture allegations. Most of the allegations were lodged against officers of MPS and MCS. Out of the 223 cases investigated, 5 were forwarded for prosecution by HRCM. However, 4 cases were sent back citing lack of evidence. HRCM finds it challenging to investigate cases resulting HRCM not being able to bring the alleged perpetrators to justice. The main challenges face by HRCM include insufficient evidence, lack of resources, procedural and documenting irregularities and lack of cooperation from relevant authorities and witnesses.

ARTICLE 5: JURISDICTION

84. Article 38 of Anti-Torture Act grants HRCM, Maldivian Courts of Law and other relevant state and government authorities with the jurisdiction to take action against a person who commits any form of physical or psychological torture, cruel inhumane treatment, or any action that infringes the dignity of a person, as defined by this Act, and by any other relevant law, under the following circumstances.

- (a) If the crime is suspected to have been committed within the borders of the Maldives
- (b) If the crime is suspected to have been committed in a vessel, vehicle or other mode of transport registered in the Maldives
- (c) If a Maldivian national commits the crime, regardless of where the crime was committed
- (d) If the victim is a Maldivian national
- (e) If the crime is committed by an expatriate worker in the Maldives, and if he/she cannot be deported or handed over to a third country under article 42 of this Act.

ARTICLE 6: ARREST AND DETENTION OF PERSONS ACCUSED OF ACTS OF TORTURE

85. Section 39 (e) of the Anti-Torture Act imposes an obligation of notification on all relevant authorities of Maldives. It states that the relevant authorities of the applicable State must be informed without delay, if a person is detained, arrested and imprisoned, or prohibited from travelling on suspicions of torture. Applicable State refers to, the state in which the act of torture is alleged to have taken place, the alleged perpetrator's country of origin or nationality, and if such person is stateless, the state in which they usually reside.

86. Statistics shared by MPS show that a total of 24 persons have been arrested in connection to offences of torture. However, it is not clear whether or not they were subjected to torture or inhumane, degrading treatment or punishment while they were in custody. Additionally, it is not clear if any of these cases were sent for prosecution.

ARTICLE 7: EXTRADITE OR PROSECUTE

87. Extradition Act passed in 2015 gives PGO the power to decide whether or not to extradite a person. The Act restricts extradition of persons on specific circumstances specified in Article 12 of the Act. However, 2016 the government of Maldives extradited an Iran national who lodged a case to the HRCM as he had reason to believe that he will be captured and tortured if he was deported. HRCM worked towards halting the decision to deport him pending the investigation and communicated concerns with relevant authorities. However, he was deported without informing HRCM.

Recommendations

- 1. Establish a system to ensure persons shall be extradited based only on warrants of arrests or judgments by a court of law.**

2. ***Establish proper mechanisms to ensure that persons extradited will not be tortured in the country of return.***

ARTICLE 8: EXTRADITABLE OFFENCES

88. Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment is incorporated into Maldivian Law the Anti-Torture Act. According to the information given by the AGO, one of the legal bases for the Anti-Torture Act, in addition to the Constitution and other international instruments that Maldives is a part of, is CAT. Section 42 of the Anti-Torture Act prohibits a person in the Maldives from being extradited to another country or returned to their native country, if there are substantial grounds for the relevant state institutions to believe, on the basis of reasonable evidence, that the person would be in danger of being subjected to torture. Therefore, CAT (through the Anti-Torture Act) is considered as a legal basis for extradition in torture and related crimes.
89. Extraditable offences and punishments for those offences are defined and stated in the Extradition Act of Maldives. Moreover, the Act outlines the procedures re

ARTICLE 9: MUTUAL LEGAL ASSISTANCE

90. Act on Mutual Legal Assistance in Criminal Matters (2/2015) governs the provision of legal assistance to foreign jurisdictions, on all criminal matters including torture. The Act allows the provision of mutual legal assistance as specified in any mutual legal assistance treaties or agreements which Maldives is a party to.
91. Maldives is not party to any treaties, concerning mutual judicial assistance that apply in the case of offences of torture.

ARTICLE 10 EDUCATION AND INFORMATION

92. The objectives of HRCM as stipulated in Article 2 of the Human Rights Commission Act comprise to protect, promote and sustain human rights in the Maldives in accordance with Islamic *Shari'ah*, the Constitution and regional, international conventions and declarations which the Maldives is a party to. Additionally, to increase awareness on human rights and promote a high regard for human rights amongst the citizens and foreign nationals in the country is one of the responsibilities entrusted to HRCM under the article 20 of the Human Rights Commission Act.

93. The article 36 of Anti-Torture Act mandates the relevant state institution to include a component on why torture is wrong and on efforts being made to prohibit and prevent torture and inhumane treatment in training of military personnel, police officers, officers of other law enforcing agencies, health service providers, state and government employees, staff from rehabilitation centres, detoxification centres, psychological service centres, special needs centres or any other person whose work involves detaining people, questioning detainees, or interacting with detainees in any way. This article also instructs the HRCM and state to ensure that educational programs at all vocational, primary, secondary and higher education centres in the Maldives include information and training on the importance of respecting human rights and human dignity and importance of prevention of torture or any form of inhumane treatment. Moreover, it is also indicated to design and plan programs by considering different age groups.
94. Since the establishment of the HRCM, dissemination of information and education on prohibition against torture and acts of cruel, inhumane or degrading treatment or punishment remain as an integral part of the advocacy programs. Correspondingly, the primary objective was to conduct capacity building programs with an aim to prevent torture to those involved in implementing legal framework. Consequently, such capacity building programs of HRCM incorporated a requirement to make it unequivocal that torture and acts of cruel, inhumane or degrading or punishment are not legitimate under any circumstances whatsoever, even if in the state of emergency or war. Accordingly, the general content covered include international human rights standards and local mechanisms to prevent torture, inhumane and degrading treatment. Moreover, the general capacity building programs on prevention of torture, and inhumane treatment by HRCM targeted law enforcement officials in charge and those involved in custody, interrogation, treatment of arrested, detained and imprisoned and medical personnel. According to the results from evaluation forms from capacity building programs, majority of the participants remain satisfied with positive feedback.
95. A total of 743 officers from MPS participated in several capacity building programs conducted by HRCM from 2010 to 2017. The participants include custody officers, station managers, station commanders, senior officers, new recruits and students of Institute of Security and Law Enforcement Studies (ISLES). The various training sessions comprised of presentation on introduction to human rights, Universal Declaration of Human Rights(UDHR), international human rights conventions that Maldives is party to, CAT, OPCAT, Nelson Mandela Rules, local human rights mechanisms, fundamental rights and freedoms guaranteed in the Constitution, Anti-Torture Act, role of HRCM, role of NPM, duties of custodial officers, rights of detainees,

use of force, issues identified by NPM, findings of torture related investigations and rights of vulnerable groups.

96. A total of 645 prison officers participated in a number of capacity programs conducted by HRCM from 2008 to 2010. Specific sessions focused on introduction to human rights, UDHR, international human rights conventions that Maldives is party to, CAT, OPCAT, Nelson Mandela Rules, fundamental rights and freedoms guaranteed in the Constitution, Anti-Torture Act, role of HRCM, role of NPM, use of force, human rights in prisons, health in prisons, and rights of vulnerable groups.

97. Training on Documenting Torture and Ill-Treatment using Istanbul Protocol was conducted by REDRESS to medical officers of government institutions, independent lawyers and human rights consultants and staff of HRCM. A total of 16 participants took part in the training and sessions delivered include introduction to the Istanbul Protocol, introduction to prohibition of torture and other cruel, inhumane and degrading treatment or punishment (CIDTP), and international legal standards involved, national legal standards and implementation of prohibition of torture in the Maldives, documentation and types of evidence, physical evidence of torture and other ill-treatment, psychological evidence of torture and ill-treatment, special considerations for documenting sexual violence, interpretation of medical findings, general considerations for taking interviews, legal interview, safeguarding and using information, case management, investigation of torture and ill-treatment and strategies for implementation of the Istanbul Protocol in the Maldives.

98. The Association for the Prevention of Torture (APT) has been instrumental in the set-up of NPM in the Maldives. They have provided valuable guidance in terms of capacity building and technical advice to NPM and overall to HRCM. Under this, three trainings were conducted, with the last one held in August 2010. The APT has continuously provided HRCM with technical support on several issues, on a need basis which includes:

- Resources provided on formulating recommendations
- Resources shared on preventive monitoring
- Resource on SPTs approach to prevention
- Commenting on the local anti-torture bill

99. The HRCM, in joint collaboration with the Ministry of Home Affairs, APT, APF and the Federal Department of the Ministry of Foreign Affairs, Switzerland, held a Workshop from 24-25 April 2007, on UNCAT and OPCAT for a wide group of Stakeholders in Maldives, including government ministries and departments, civil society organizations and media officials.

100. The HRCM signed a memorandum of understanding with the APT for a year-long consultation program in 2008 in order assist professional and technical assistance to fulfil its obligations under OPCAT.

101. Following is a summary of programs conducted by NPM from 2014 to 2018. The program includes awareness sessions on Anti-Torture Act, Nelson Mandela Rules, Role of NPM and CAT/OPCAT.

Awareness sessions conducted by NPM			
Year	Duration of program	Number of Participants	Institutions
2018	1	15	<ul style="list-style-type: none"> – Thaa. Veymandoo Police Station – M. Muli Police Station
2017	4	41	<ul style="list-style-type: none"> – HD. Kulhudhufushi Police Station – GA. Villingili Police Station – GN. Fuvahmulah Police Station
2015	1	43	<ul style="list-style-type: none"> – L.Gan – L.Fonadhoo Police Stations
2014	4	30	<ul style="list-style-type: none"> – Male Custodial, – Dhoonidhoo Custodial, – Atoll Police stations, – Male Jail, – Asseyri Jail – Maafushi Prison
2014	1		<ul style="list-style-type: none"> – Kudhakudhinge Hiya – Villimale Detoxification Centre – National Drug Agency, – Drug Treatment – Detoxification Centre – Juvenile Justice Unit – HPSN

102. Information on trainings conducted by other stakeholders is included in the Annex

Recommendations

- 1. Ensure HRCM is allocated sufficient funds to conduct necessary capacity building programs and awareness as part of the on-going efforts to implement the framework on preventing torture and other ill-treatment of persons deprived of their liberty and promote a preventive culture.**

ARTICLE 11: INTERROGATION TECHNIQUES

Legislative Standards

103. The present laws, regulations, code of conduct and instructions in place concerning the treatment of persons deprived of their liberty include; the Police Act , the Prison and Parole Act, the Criminal Procedure Code (12/2016) (hereinafter referred to as the Criminal Procedure Code), Code of Conduct of Maldives Police Officers, Regulation on using Handcuffs and Regulation on using Batons, Code of Conduct of the Officials (2015/R-133), Code of Ethics of MPS, Regulation on the Conditions of the Inspector of Correctional Services (2014/R-165).
104. The regulations pertaining to basic principles for the treatment of prisoners include; Regulation for Prisoners and Detainees on Seeking Medical Assistance from Abroad (2014/R-186), Regulation on Body Check and other Accessories Owned (2015/R-3), Regulation on Taking Samples (2015/R-4), Regulation on Prisoners and Detainees (2015/R- 127), Regulation on Conducting Medical Services for Detainees on Remand (2015/R- 223), Regulation on Fundamental Rights provided to Detainees and Prisoners (2016/R-34), Regulation on Receiving and Organizing Phone Calls, Letters and Meetings with the Detainees and Prisoners (2016/R- 35), Regulation on Exercising all Legal Powers and Discretions Vested in the Police and Regulation on Sending Authorized Persons to Meetings, or Places that are Stated in the Constitution (2016/R-36).
105. The legislative standards followed by MPS during the process of interrogation are, the Constitution, Criminal Procedure Code, Precedents followed by the Supreme Court of the Maldives and High Court of the Maldives, and MPS General Regulations (Regulation number MPS-1/2008-2). The Section 46 of the Criminal Procedure Code (12/2016) requires MPS to audio or video record interviews of all arrested. According to MPS, the Bureau of Crime Records maintains all the records related to crimes. Thus, recorded interviews during investigation or interrogation process are kept confidential and it would be made available to the court as and when required. ²

Fundamental Rights on Arrests and Detention

106. Article 7 of the Police Act explicitly states that it is one of the duties of police officers to fully abide and comply with the Constitution, and laws and regulations of the Maldives. Professional Standards Command of MPS investigates complaints on allegation of abuse, torture, ill-treatment, conduct of officers during arrest, investigation or interrogation. The findings of the investigation are to be presented to Disciplinary Board of MPS and the

suspected officer will be given the opportunity to present the case. The Disciplinary Board of MPS makes the final decision on the case. It is rather concerning that standards on the treatment of persons subjected to any form of torture at the time of arrest, detention or imprisonment and prevention of torture does not explicitly prohibit torture. The Code of Conduct for Maldives Police officers as Article 15 of this code reads *“should not subject any person arrested or detained accused of crime, to any form of harassment, damage or loss of respect and dignity as a human being”*. Thus, staff who fail to abide by the rules and regulations face disciplinary measures such as counselling, special training, competency counselling, close supervision, changing the work place, demotion, suspension, termination and based on the intensity of the offence, a punishment under informal resolution can also be given. Paragraph 150 of the State Report gives reference to one such case where the Disciplinary Board of MPS concluded with sufficient evidence that it involved torture, inhumane and degrading treatment and dismissed the police officer under Section 8(g) of the Regulation on Disciplinary and Administrative Offence and Punishment.

107. Article 45 of the Constitution stipulates that everyone has the right not to be arbitrarily detained, arrested or imprisoned. Moreover, Article 54 of the Constitution prohibits torture, cruel, inhumane or degrading treatment or punishment, and Anti-Torture Act declares freedom from torture and penalizes torture. Nevertheless, the absence of meaningful effort to implement the Anti-Torture Act along with other existing weaknesses such as inadequate institutional capacity remains evident from cases of alleged torture reported to HRCM. Furthermore, reported cases also show that there is inconsistency in the application of constitutional and legislative provisions on prohibition of torture. Available data suggest that the risk of torture is higher at the time of arrest, and while controlling protest and incidents. 226 cases of alleged torture were reported to HRCM during this period on excessive use of force while trying to control both protest/incidents, and at the time of arrest. Additionally, 99 cases of arbitrary detention and 3 cases of detention without a valid reason were reported. MPS was accused of the use of excessive force that amounts to torture in 76 cases, torture at the time of arrest in 111 cases, arbitrary arrest in 75 cases and detention without a valid reason in 1 case. MCS was alleged to have used excessive force towards detainees in 20 cases, arbitrary imprisonment in 9 cases and detention without a valid reason in 1 case.

108. The Article 46 of the Constitution stipulates that arrest and detention for an offence may not be made unless the arresting officer observes the offence being committed, or has reasonable and probable grounds or evidence to believe the person has committed an offence or is about to commit an offence, or under the authority of an arrest warrant issued by the court. Additionally, the Police Act allows police officers to arrest persons on suspicion

of a crime. In accordance with Article 48 (a) of the Constitution, the arrestee has the right to be informed immediately, the reasons for arrest and to be informed in writing within at least 24 hours. Article 51(a) of the Constitution states that all persons charged with an offence has the right to be informed without delay of the specific offence in a language understood by the accused. MPS was accused in 11 cases investigated by HRCM from 2008 to 2017 to have denied the right to be informed without delay of the offence in a language understood by the arrestee. Additionally, in 18 cases they were accused of not providing the arrestee with the name and rank of police officer and the police station to which he/she is being taken to.

109. Article 53 of the Constitution stipulates that everyone has the right to retain and instruct legal counsel at any instance where legal assistance is required and in serious criminal cases, the state should provide a lawyer for an accused person who cannot afford to engage one. The Article 48 of the Constitution also stipulates that all persons have the right to retain and instruct legal counsel without delay and to be informed of this right and to have access to legal counsel facilitated until the conclusion of the matter for which he/she is under arrest or detention. Similarly, Article 46 (b) of the Criminal Procedure Code states that an arrestee should be allowed to call a family member, a friend or a lawyer and be given the chance to inform that person where he/she is being held. However, the internal procedures leave MPS with the discretion to determine when, where and how long to allocate phone calls. While the Article 46(e) of this legislation states that unless and otherwise stated in another law, police can question the arrestee if the appointed lawyer fails to be present without an adequate reason after 12 hours of the suspect being granted the opportunity to talk to the appointed lawyer. Furthermore, an additional 6 hours is to be given to appoint another lawyer, if the first lawyer is unable to be present without notice, as per Article 46(f) of this legislation. According to Article 46(i) of Criminal Procedure Code (12/2016) MPS should arrange a translator if MPS is not able to question the person in the language he/she uses for everyday communication. While Article 46 of Criminal Procedure Code (12/2016) provides for access to legal counsel by the arrestee or detainee, the Article 45 of this legislation which specifies procedures to be followed after an arrest, does not encompass a provision that mandates the police to inform the reason(s) of the arrest or detention to family members, a friend or consular service following a person's arrest.

110. NPM also observed that there are complaints of delay in providing a lawyer due to low number of legal counsels in the state representing detainees. Additionally, the amount of time allocated for the meetings with lawyer remain limited due to shortage of staff and space at the facilities.

111. From 2008 to 2017, HRCM has received complaints where in 18 cases, MPS was accused of denying access to lawyers and family members, and not informing the detainee of their right to legal counsel at the time of arrest. Further, MPS was accused of conducting interrogations without legal representation in 2 cases.
112. There have been no cases submitted to HRCM on violation of the right to remain silent, except to establish identity and to be informed of this right under Article 48 (c) of the Constitution.
113. Pursuant to Article 48(d) of the Constitution, everyone on arrest or detention has the right to be brought within 24 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. Article 3(d) of the Prison and Parole Act states that any person detained for more than 24 hours must be detained only in a place categorized as a prison by Inspector of Correctional Services or at a prison already operating at the time of the act which has been granted a temporary license to operate as a prison for not more than one year, until it has been categorized as a prison by the Inspector of Correctional Services. According to the cases reported to HRCM from 2008 to 2017, MPS was accused of violation of the right to be brought within twenty-four hours before a judge who has the power to determine the validity of the detention in four cases. Article 5 of Prisons and Parole Act specifies other places where people can be kept in detention. Conversely, this Act does not address or set guidelines on administrative detentions for law enforcement such as the military and the police. In the past, police officers and military officers have been detained for long periods without access to court procedures and family visits.
114. According to Article 17 of Anti-Torture Act, places established for persons and juveniles serving a sentence and those detained for investigation, remand, rehabilitation, detoxification and centres designated for people with special needs need to be publicly declared by Minister of Home Affairs within 15 days of this this Act coming into force. Subsequently seven days following this declaration, the Minister of Home Affairs should submit a report to HRCM with details of places of detention. Detention of a person in place other than those classified as detention centre is an offence according to Article 22 of Anti-Torture Act. With the ratification of Anti-Torture Act, the Minister of Home Affairs has been sharing the details of the persons detained in all detention facilities. However, Anti-Torture Report published by HRCM in 2018 reports that the list shared by the Minister does not include the remand units. Furthermore, in 2017 HRCM investigated a case where persons were detained in the MPS Headquarters- Shaheed Hussein Adam Building-even though this facility was not listed as a detention facility. On further inquiry, MPS informed that a court

order states that MPS may detain persons in any facility authorised by Minister of Home Affairs. Additionally, HRCM also observed that the Minister of Home Affairs establishes remand centres, in the absence of a regulation as required under the Prison and the Parole Act. Article 4 of the Prison and Parole Act specifies the categories of prisons; custodial prisons for persons detained for investigations, remand centres for persons whose investigations have finished and are awaiting trial or are waiting for the end of trial and general prisons for persons serving their sentence.

115. Juveniles with behavioural issues were administratively detained by MPS in Feydhoo Finolhu Correctional Training Centre for Children (CTCC) as per the paragraph number 290 and 291 of the state report submitted by Maldives in 2015, under Convention on the Rights of the Child (CRC) to the Committee on the Rights of the Child.³ The reasons for the administrative detention were stated as “juveniles posed a risk to society and to themselves; typically, they have been arrested on repeated occasions, on suspicion of having committed offences”. This Centre was closed following a directive of HRCM in 2013.
116. Juveniles with behavioural issues were taken to a Police Training Centre in Vaanee Island for a rehabilitation program of 60 days. Annual Anti-Torture Report of HRCM published in 2016 reported that Dh.Vanee Police Training Centre was not included in the list of places where persons are deprived of their liberty shared to HRCM on July 10th, 2016 by the Minister of Home Affairs.
117. The Annual Anti-Torture Report of HRCM published in 2016 also reported that a military official was detained in October 2015 in one of the building of MNDF. The report stated that this particular building was not included in the list of detention centres shared to HRCM on November 15th 2015 by the Minister of Home Affairs. Furthermore, MNDF did not cooperate with HRCM during its investigation process.
118. As discussed under Article 2 of this report, Ministry of Gender and Family investigated 10 staff working at 3 centres that accommodate children under state care. While the penalties imposed on the staff were suspension or termination from employment, these cases were not referred to HRCM under the Anti-Torture Act.
119. According to MPS, a person would not be in custody for more than 30 days for investigation purposes and duration of the custody may take longer depending on the offence. Conversely, monitoring visits undertaken by NPM found prisoners detained in undeclared remand facilities by MPS and MCS, even after the conclusion of their investigations. In cases where MPS held prisoners even after their cases were sent for prosecution, prisoners were

held under a court order, before the commencement of their trial or until the end of their trial, in specific units mostly with other convicts. It is concerning that detainees in remand remain in custody for prolonged periods, while their trials pend over a year.

NPM also found that female detainees held in female remand units find it particularly difficult to contact lawyers. It is significant to note that The Prison and Parole Act stipulates that convicts and detainees must be detained in their respective detention centres based on their level of criminality and stages of conviction. MCS has fallen short to establish a specialized remand facility for detainees as specified in Prison and Parole Act (14/2013), subsequently making their detention arbitrary. According to the torture cases submitted to HRCM, MPS was accused of torture in an unannounced facility in one case in 2018.

120. NPM found that detailed registers are maintained in all places of persons deprived of their liberty but information gaps are observed in many of these registers. Additionally, prisons, police custodial and police stations maintain a digital registry within the institution. However, documentation such as individual files and medical files are not properly maintained in some facilities. Recommendation were made to specific institutions about proper maintenance of the registries as there were information gaps and some of the issues pertaining to this were resolved over the years.

121. With the establishment of Hulhumale' Detention Centre in 2014, Ministry of Home Affairs announced that the Centre will be operated by MCS. Additionally, Minister of Home Affairs is mandated to establish a regulation that gives the Controller of Immigration power to detain people until they are deported under Article 142 of Prison and Parole Act (14/2013). Even though this regulation is yet to be endorsed, detention of migrants continues in this Centre under the Maldives Immigration Act. The migrants who violated immigration laws are held in Hulhumale' Detention Centre by the order of Controller of Immigration until state authorities arrange the deportation of detainees.

NPM in its monitoring visit to the Hulhumale' Detention Centre found migrant detainees were denied the rights at the time of arrest guaranteed by the Constitution, thus making their detention arbitrary.⁴ The migrant detainees who violated immigration laws were arrested without a court order and the right to represent their case in a court of law. Migrants remain detained for months in this Centre due to the long deportation process and lack information on when they will be deported. NPM also found that interpreters were not provided even though all documents remain in Dhivehi. Since a large population of Bangladeshi detainees do not understand Dhivehi or English the migrant detainees who

understand Dhivehi helped in communication, as the officers at the Centre do not understand their language.

122. Presently, MCS permits the opportunity to call family members only if their phone numbers are locally registered. Thus, the foreigners in detention facilities managed by MCS remain deprived of the opportunity to contact their family members abroad. NPM's visit to Hulhumale' Detention Centre found that treatment and conditions were also deemed inappropriate and inhumane.

Safeguards for Minors

123. According to section 53 (d) of Penal Code, a person who is less than 18 years old at the time of the offense and who is excused for their offense must be referred to the Juvenile Court. The Article 43(e) of Criminal Procedure Code (12/2016) states that if a child is arrested, his/her parent or a person who can protect his well-being should be informed of the arrest at the earliest or within 4 hours at the most. According to Article 8 of the Regulation on Conducting Trials, Investigations and Sentencing Fairly for Offences Committed by Minors, a lawyer must be assigned in all cases regarding children. Article 9 of this regulation states that investigation of a case related to children must be carried out in an appropriate setting by a staff of Child Protection Unit, or island office or atoll office, consideration to be made to the age of the child and investigation team must wear plain cloth with due regard for the age of children. According to Article 10 of this regulation, investigation and prosecution is mandatory if the juveniles commit *Hadd* offense or if it is a repetition of an offence by the child. However, in other offences, it is required to give advice and informal verbal warning in the presence of the parent if it is the first offence, a formal written warning with parent and child signature. Article 11 of this regulation emphasises that arrest and detention must be the last resort and parents along with an official from the Child Protection Unit have to be notified within 24 hours of detention. Additionally, a separate detention from adults, juvenile delinquents and repeated juvenile delinquents must be considered in order to avoid communication between them. A child can be held in detention for more than 22 days as per the advice of the Juvenile Justice Coordination Committee. Article 14 and 15 of this regulation states that all child related cases in atolls must be proceeded in Island Courts and cases in Male' must be proceeded in Juvenile Court in the presence of parents and JJU staff.
124. Monitoring visits to places of detention found that safeguards for juvenile delinquents remain inadequate. A single prison cell to accommodate underage girls were observed in Maafushi Prison. However, the cell is not completely segregated from that of the adults in the female unit. It was also found that the Dhoonidhoo Police Custodial lacks a specific unit

or prison cell specialized for juvenile delinquents. Furthermore, male juvenile delinquents were accommodated in a cell located in a unit for adult males, and female juvenile delinquents were accommodated in two detention cells located in the unit for female adult detainees. It was also observed that cells that accommodate female juvenile delinquents remain quite dark during the day and a cloth curtain was used as the toilet door.

125. The prison unit specialized for juvenile delinquents in Asseyri Prison accommodates all juvenile delinquents in one single cell without segregating them according to the crimes they had committed. It was also observed during a visit in 2016 that this prison lacks a regulation on the administration of disciplinary measures against juvenile delinquents and the current disciplinary measures taken against juvenile delinquents amounted to inhumane and degrading treatment. HRCM has met with MCS immediately after the visit and recommended to ensure that juvenile delinquents are not subjected to torture, inhumane and degrading treatment or punishment.

126. A separate unit or a cell specific for juvenile delinquents is not established in the Male' Custodial, Male' Prison and Hulhumale' Detention Centre. Moreover, the juvenile delinquents are taken into house arrest in the atolls if the atoll based detention facilities lacked a separate cell for minors.

127. Monitoring visit to the HPSN found that the institution lacks a separate unit for children. Since the establishment of the Centre, girl children remained accommodated with adults with psychiatric disorders. Even though underage males were kept in a separate room due to infrastructural changes in 2017, they have been transferred to wards where severe patients with severe psychiatric disorders remain admitted.

Establishment of NPM

128. The independence of HRCM is guaranteed in the Constitution, the Human Rights Commission Act and Anti-Torture Act. According to Article 44 of the Anti-Torture Act, the HRCM is designated as the National Preventative Mechanism (NPM) to prohibit and prevent all acts of torture as defined by Anti-Torture Act. The HRCM is granted all the necessary power to fulfil the responsibilities of NPM, as NPM is inducted into the responsibilities of HRCM. Furthermore, Anti-Torture Act provides HRCM with powers necessary to take all direct and indirect actions to prohibit, and prevent torture, cruel, inhumane treatment or any action that infringes on the dignity of a person as defined by this Act, and this is in addition to the powers granted to HRCM by the Human Rights Commission Act.

129. The Article 30 of Human Rights Commission Act specifies that, state treasury should provide the HRCM with funds from the annual budget approved by the People’s Majlis, essential to undertake the responsibilities of the HRCM. The Article 45 of the Anti-Torture Act stipulates that annual budget of the HRCM should include the necessary amount to successfully carry out the duties imposed upon the HRCM by this Act.

130. The budget allocated for HRCM has decreased over the past 5 years. Due to this, NPM has faced difficulties in performing its duties as envisioned by OPCAT

131. All the visits by NPM were conducted unannounced. During each visit, the visiting team carries with them a letter to the facility visited, which includes the names and titles of the visiting team members and purpose of the visit. This letter also requests for the co-operation and assistance from the facility throughout the visit. This letter is also sent to the parental ministry or institution of the facility visited. Generally, there are no difficulties faced when authorizing NPM’s unannounced visit to prisons and detention facilities except for a little delay for security reasons.

Number of Visits undertaken by NPM			
year	Number of visits undertaken by NPM	Total number of place of detention facilities visited	Places of detention
2008	7	4	3 Prisons, 1 Custodial, 1 Child Care Homes, 1 Psychiatric/old age home, 1 Rehabilitation Centres
2009	11	8	5 Prisons, 2 Custodial, 1 Child Care Homes, 1 Psychiatric/old age home, 1 Rehabilitation Centres, 1 Immigration Detention Centre (currently Hulhumale’ Detention Centre)
2010	12	7	2 Prisons, 0 Custodial, 1 Child Care Homes, 2 Psychiatric/old age home, 1 Rehabilitation Centres, 1 Detoxification Centres, Police Stations
2011	17	12	2 Prisons, 2 Custodial, 3 Child Care Homes, 1 Psychiatric/old age home, 1 Detoxification Centres, 1 Immigration Detention Centre (currently Hulhumale’ Detention Centre), 7 Police Stations
2012	21	14	2 Prisons, 3 Custodial, 3 Child Care Homes, 1 Psychiatric/old age home, 1 Rehabilitation Centres, 1 Detoxification Centres, 9 Police Stations, 1 Girifushi Training Centre
2013	13	8	3 Prisons, 1 Custodial, 2 Child Care Homes, 1 Psychiatric/old age home, 1 Rehabilitation Centres, 1 Detoxification Centres, 4 Police Stations

2014	19	15	2 Prisons, 3 Custodial, 1 Child Care Homes, 1 Psychiatric/old age home, 1 Rehabilitation Centres, 1 Detoxification Centres, 2 Hulhumale' Detention Centres, 8 Police Stations
2015	18	12	3 Custodial, 2 Child Care Homes, 1 Psychiatric/old age home, 1 Rehabilitation Centres, 2 Detoxification Centres, 1 Hulhumale' Detention Centres, 8 Police Stations
2016	18	11	3 Prisons, 3 Custodial, 3 Child Care Homes, 1 Psychiatric/old age home, 2 Rehabilitation Centres, 1 Detoxification Centres, 1 Hulhumale' Detention Centres, 4 Police Stations
2017	13	10	2 Prisons, 2 Custodial, 2 Child Care Homes, 1 Psychiatric/old age home, 1 Hulhumale' Detention Centres, 5 Police Stations
2018	3	3	1 Prisons, 2 Police Stations

132. NPM has put forward 1813 recommendations from 2008 to 2017 to the state authorities where 41% of the recommendations were on building institutional capacity, 31 % were on legislative and policy measures and 28% were on implementation and enforcement. Implementation status of the recommendations indicated that 30% of the recommendations remain standardized, 27% of the recommendations resulted in positive progress, 19 % of the recommendations resulted in adequate progress. While 16% of the recommendations remain as nominal progress or initiated, 7% of the recommendations remained with no progress status.

Other Mechanisms to Inspect Places of Detention

133. Apart from NPM established under OPCAT, there are other mechanisms established to inspect prisons and other places of detention. The office established within Ministry of Home Affairs under the The Prison and Parole Act with the mandate to conduct unannounced visits to the prison is faced with issues such as shortage of resources, absence of administrative procedures to undertake visits and shortfall of programs that allows convicts serving long sentences to be involved to improve their wellbeing. Under Article 14 of the Prison and Parole Act members of the temporary and permanent committees of the People's Majlis are permitted to visit prisons and police custodial, and put forward necessary recommendations from the inspections. So far, HRCM has not received details on frequency and proportions of places visited.

134. Article 13 of The Prison and Parole Act permits international organizations to conduct inspection visits to prisons and custodial as per a regulations made under the Act.

Recommendations

- 1. Review and amend all regulations, procedure and administrative codes of the law enforcement bodies to incorporate the provisions to prohibit and prevent torture and inhumane treatment.**
- 2. Review and amend all regulations, procedure and administrative codes of the institutions with the mandate to accommodate children and persons under State care to incorporate the provisions to prohibit and prevent torture and inhumane treatment.**
- 3. Amend the legislative framework to address, regulate and provide independent judicial oversight to determine the legality of the administrative detention.**
- 4. Ensure that there is Independent monitoring of places of administrative detention of military officials.**
- 5. Ensure that law enforcement bodies and those institutions that accommodate persons under State care report all cases of torture to and that it is reflected in their regulations and internal investigation procedures.**
- 6. Ensure that those institutions that accommodate children under State care report all cases of torture to HRCM and that it is reflected in their regulations and internal investigation procedures.**
- 7. Implement a procedure to periodically review the internal procedures of arrest and interrogation to comply with the provisions of CAT.**

ARTICLE 12. TORTURE SHALL BE INVESTIGATED

Legal Mechanism

135. There are two regulations formulated by HRCM outlining procedures of torture cases. They are:
- a. Regulation Number 2014/R-38 – Regulation on Investigating and Taking Action on Cases Submitted under the Anti-Torture Act
 - b. Regulation Number 2014/R-37 – Regulation on the Standards on Ensuring the Rights of Persons Subjected to Torture

136. Additionally, Criminal Procedure Code (12/2016) sets down more detailed procedural standards on investigations, prosecution and adjudication of all criminal cases.

137. Article 18 of the Anti-Torture Act requires HRCM to conduct independent and impartial investigations of torture cases at an adequately swift phase. Article 18 (b) stipulates that investigation of cases should be completed within three months. In addition, this article also states that the complainant should be given an update of the investigation within two months. It also states that the complainant should be provided an investigation report within 14 days of the completion of the investigation.

138. In cases where HRCM is unable to conclude a thorough investigation within three months, HRCM extends the duration of the investigation in order to complete the investigation and collect substantial evidence. So far investigation period has been extended in four cases to acquire substantial evidence required to prosecute the case.

139. If HRCMs investigation finds that acts of torture were committed, Article 18 (c) requires HRCM to forward its findings to the Prosecutor General within 14 days of the completion of its investigation. Under Article 18 (d), the Prosecutor General is required to make a decision on whether or not to press criminal charges within 30 days and under Article 18 (e), they are required to bring criminal proceedings within 90 days of receiving the case from HRCM.

Investigation Staff

140. The requirements for investigation officers of HRCM is to have either an advanced certificate, diploma or a degree in a related field with a specified period of work experience. There are some training opportunities for these staff. REDRESS conducted a training on documenting torture and Istanbul Protocol for investigation officers of HRCM along with other stakeholders in 2015. Additionally, trainers from MPS conducts investigation trainings for investigation staff of HRCM.

Procedure for Lodging Complaints at HRCM

141. Torture complaints can be lodged at HRCM by means of the complaints form available on HRCM's website, calling HRCM's toll free number, through a letter, fax, and email or in person.

142. Once a complaint is received, investigation officer's document information related to the case by visiting the site where the incident took place, taking statements of the victim and

witnesses, taking photos and videos where relevant and by conducting meetings with relevant authorities.

Challenges faced in the Investigation of Cases of Torture

143. The main challenge faced by HRCM in investigating cases related to torture is lack of sufficient evidence to prove allegations of torture in a court of law. Often times, little to no evidence is available other than the word of the victim. Lack of supporting evidence in the medico-legal reports, lack of witnesses as well as lack of cooperation from witnesses, the victims and their lawyers. In addition, CCTV footage which would provide important video evidence in investigating such cases are insufficient.

144. MPS not maintaining proper documentation of persons taken into custody and refusal by the relevant authorities – including MPS and MCS – to cooperate in the investigations add to the challenges faced by HRCM in investigating cases of torture. Furthermore, there are no independent forensic laboratories in the country which forces HRCM to get assistance and rely on evidence and forensic reports from MPS. Given that police officers are the alleged perpetrators in many cases of torture investigated by HRCM, relying on MPS forensic laboratory poses as a conflict of interest. Additionally, while the Anti-Torture Act mandates HRCM to document and store forensic evidence, due to budgetary constraints, HRCM has been unable to undertake this task.

145. Another major challenge is that although HRCM is entrusted with the legal mandate to work for the prevention of torture, HRCM does not get sufficient budget and resources to travel to atolls in order to investigate cases of torture. Similarly, due to budgetary constraints, HRCM is unable to recruit an in-house medical expert.

Cases of Torture

146. From 2008 till September 2018, 630 allegations of torture were investigated by the HRCM. Of these, only one case was concluded as torture by HRCM. This case was forwarded to the PGO in 2016 and criminal proceedings on the case has begun.

147. Article 50 of the Constitution calls for prompt investigation and prosecution of offences. However, HRCM has received 134 cases from 2008 to 2017, regarding delays in the investigation process. MPS was accused in 77% of these cases. Some of these cases were also delayed at the prosecution stage.

148. From 2008 to 2017, HRCM received 150 complaints of torture at the time of arrest. The alleged perpetrator in 83% of these cases was MPS. On average, 33 complaints of torture at detention facilities per year were lodged at HRCM between 2008 and 2017. Of these, most number of cases were from 2013 and 2015. And MPS was the alleged perpetrator in 65% of these cases. Additionally, it should be noted that there is no trend of a decline in the number of cases lodged over the years.

149. Article 17 of the Anti-Torture Act stipulates that places of detention for any purpose should be publicly declared. In addition, Article 22 of this Act criminalizes detaining a person in a place which is not prepared for and publicly announced as a detention center. However, in 2017, HRCM in its investigation identified one case where persons were detained at a facility that was not publicly declared as a place of detention. Furthermore, in the Anti-Torture Report of 2017, HRCM noted that the remand units that were being used to detain those awaiting trial after an investigation was not included in the list of places of detention that was publicized by the Ministry of Home Affairs and shared with HRCM. HRCM further notes that the remand units established by MPS and MCS were not in line with the stipulations in Article 6 of the Prison and Parole Act.

150. HRCM received 12 complaints of persons arrested not being informed of their right to legal counsel as stipulated in Article 48 of the Constitution. HRCM also received 2 complaints regarding the police conducting an interrogation without the presence of legal counsel and 2 complaints of being deprived of the opportunity to meet with their legal counsel in private.

Recommendations

- 1. Establish an independent forensic institution in Maldives or collaborate with independent medical institutions to conduct independent forensic investigations.***
- 2. Allocate necessary budget for HRCM to carry out their legislative mandate.***

ARTICLE 13: RIGHT OF THE VICTIM TO COMPLAIN TO COMPETENT AUTHORITIES

Available Remedies

151. The Article 20 of the Human Rights Commission Act provides for a person or an organization or a representative acting on their behalf to file a complaint to HRCM on alleging infringement of human rights or aiding and abetting such an act. Similarly, a person who has been tortured is guaranteed the right to lodge complaints with the HRCM under Article 18 of Anti-Torture Act. HRCM ensures that it follows international conventions and

Istanbul Protocol and currently is in the process of drafting a complaint procedure. HRCM takes all necessary measures to ensure that investigations are completed within three months as per Anti-Torture Act. Nevertheless, HRCM undertakes regular follow-up on cases where investigations were not completed within specified three months. It is significant to note that lack of resources is the main challenge faced by HRCM in providing remedies to victims of torture or other cruel, inhumane and degrading treatment or punishment.

Remedies available to the Complainant in case the Competent Authorities Refuse to Investigate His/her Case

152. Section 15(f) of Prosecutor General's Act (9/2008) gives the power to the Prosecutor General to order an investigation based on a complaint or on their own discretion. Section (4) of Prosecutorial Procedure Code (2017) states that any individual who is dissatisfied with a decision by an investigation authority due to their refusal or progress of investigation to submit a complaint to the PGO. PG shall reply to the individual within 7 days regarding their decision. Section 8 states that if the PG decided to order an investigation, the investigating authority shall appoint an investigating officer within 7 days and shall share the progress of investigation with the appointed prosecutor every 15 days.

Mechanisms Established to Ensure Protection of Complainants and Witnesses against any kind of Intimidation or Ill-Treatment

153. Anti-Torture Act has provided the mechanisms to ensure that the complainant and victims involved in cases of torture are protected. Victims are protected from intimidation and fear of reprisal by prohibiting all persons involved in custodial agencies from viewing the complaint from a torture victim under Article 18 of Anti-Torture Act. This article also imposes a duty on the state to provide adequate protection to the complainant, their family and lawyers involved in the case. Moreover, to mitigate further humiliation to the person filing the complaint as a result of lodging the complaint or, any harm or threat that might arise as a result of presenting evidence for investigation and for submission of statements to be given during the trial, it is required that the State authorities and the Court to act in a manner to provide adequate protection to the person filing the complaint and the lawyers and family of the person filing the complaint. This Article also imposes an obligation on the HRCM to get regular updates from relevant state authorities on actions taken regarding the complaint and progress of prosecution and give such information to the torture victim until a sentence is passed by the court regarding the complaint. Moreover, HRCM, PGO and MPS are to

provide any assistance required to the complainant and their attorney to submit the complaint filed by the torture victim.

Mechanism in Place for Lodging Complaints About Torture, Ill Treatment or Poor Services to Persons Deprived of Liberty

154. Article 18 of Anti-Torture Act obliges all institutions to ensure and facilitate to provide the person with resources to lodge a complaint from place of detention, and the complainant to be informed about the progress of the investigation within two months of submission.

155. Article 9 of the Prison and Parole Acts specifies Minister of Home Affairs to appoint an Inspector of Correctional Services to report findings from inspection visits to places of detention. The responsibilities of the Inspector of Corrections are outlined in the Article 10 of this Act which encompasses independent inquiry into the complaints of torture of detainees. Article 82 of the Prison and Parole Act provides for detainees to lodge complaints to Director of Prisons or an officer designated by Director of Prisons to handle complaints. Depending on the type and severity of the complaints and other grievances raised, the Director of Prisons can act in the following manner.

- Maintain documentation of the complaints and measures undertaken.
- Provide prompt health remedies to detainees who submitted complaints of physical abuse, concurrently reporting the case to Commissioner.
- Inform the detainee the decision to close the case, if there are no factual information of the complaint lodged by the detainee. Conversely, the existence of factual information would make it obligatory to inquire the lodged complaint further, respond to detainee and take necessary measures.
- Inform the detainee within five days of the decision made following inquiry into the complaint.

156. If the detainee remains discontent with the decision made by the Director of Prisons or action of a Custodial Officer, the detainee can lodge the case to Inspector of Corrections under Article 83 of the Prison and Parole Act. Moreover, Director of Prisons must facilitate communications to the Inspector. According to Article 84 of this Act, a detainee who remained discontent with the decision by the Director of Prisons, can lodge the complaint to the Inspector of Corrections Service during an inspection. In such circumstances, the Inspector must inquire about the complaint and discuss it further with Director of Prisons to resolve the matter providing the fact that it is a valid complaint. Additionally, the Inspector

can forward the complaint raised by the detainee to the Commissioner, if it is not resolved through mediation.

157. Total of 588 cases related to torture were submitted to HRCM from 2008 to 2017. During this period, on an average of 58 cases related to torture were submitted per year. In 87% of these cases, the victims were males and in 13% females. The highest number of cases were reported in 2012 and MPS was the accused in almost all of those cases. In this period, MPS also remained as the accused in 60% of the all torture cases reported, and 39 % of the cases were against MCS. From the total 588 cases reported to HRCM from 2008 to 2017, 62% torture cases were of people deprived of liberty, 33% were on inhumane treatment of people arrested. MPS remained as the accused in more than half of the cases from people deprived of liberty and MCS was the accused in more than half of the cases on inhumane treatment of arrested or detained.

158. NPM visit to detention facilities found that detention facilities have established policies to implement a complaint mechanism and the detainees are briefed on this at the time of placement. However, following issues relating to mechanism in place for lodging complaints were identified:

- There were inconsistencies on the complaint mechanism established in the atoll based police stations thus relevant recommendations on establishment of a sound complaint mechanism to MPS and disseminate information on arrestees.
- There is an established standard operating procedure which provides for the complaint mechanisms established within the children centres. Children accommodated in the centres were informed of the procedures to be followed, persons to reach out if there is a need to lodge any complaints. Recommendations were made to effectively document the complaints made by children or the staff in the facilities to ensure efficiency in the application of the procedures.
- HPSN lacks a complaint mechanism thus recommendations were made to establish a grievance mechanism and to create awareness among staff of HPSN.
- NDA lacked a detailed procedure on complaints mechanism thus recommendations were put forward to address the issue.

Access to Independent and Impartial Judicial Remedy

159. There are legal barriers to access to judicial remedies for any individual and no forms of discrimination in accessing judicial remedies according to the Constitution. Article 17 of the Constitution states that everyone is entitled to rights and freedoms included in Chapter 2 of the Constitution without any discrimination of any kind, including race, national origin, colour, sex, age, mental or physical disability, political or other opinion, property, birth or

other status or native island. Additionally, Article 20 states that every individual is equal before and under the law, and has the right to equal protection and equal benefit of the law. While Article 42 of the Constitution states that everyone is entitled to a fair and public hearing within a reasonable time by an independent court or tribunal established by law be it a case of criminal or civil nature, Article 43 states that everyone has a right to administrative action that is lawful, procedurally fair and expeditious and the Article empowers any person who has been adversely affected by an administrative action to submit the matter to the court.

Recommendations

- 1. Ensure that an effective and accessible complaints mechanism is established in places where persons are deprived of liberty, including children under State care.***
- 2. Ensure that mechanisms are established in order to protect victims and witnesses of torture, cruel, inhumane, degrading treatment or punishment.***

ARTICLE 14: RIGHT OF THE VICTIM TO REDRESS

Compensation to Victims of Torture and Ill-Treatment and their Families

160. It is significant to note that Article 33 of the Anti-Torture Act stipulates that the level and type of compensation will be decided by the courts of law considering elements of each case individually and in accordance with the criteria set by the court. Moreover, for the promotion of justice and fairness, the courts can grant compensation for all the losses or some of losses requested by the victim as decided by the court and if a precedent has been set, a similar level and type of compensation as that case.

161. While Article 29 of Anti-Torture Act elaborates on provisions of compensation to victims of torture, Article 30 stipulates ways of filing for compensation. According to Article 29 of Anti-Torture Act, if a court of law identifies and passes a ruling against a person or a group of people for the crime of torture, based on the ruling, the victim has the right to be compensated as prescribed by this Act. Article 30 of this Act stipulates that economic and non-economic compensation can be granted if a torture victim suffers any loss as a direct result of torture.

162. The types of economic compensation that can be granted to a torture victim are specified in Article 31 of this Act, that includes compensation as a result of act of torture from financial loss as a result of torture, loss of earnings or future loss of earnings, legal costs, and cost of

past, present and future medical treatments of the victim to cure and recover from damage caused. Subsequently, Article 32 encompassed non-economic compensation types that can be awarded to victims as a result of torture, loss of an organ or body part, loss of function of an any organ or body part, inability to lead a normal life due to loss of any organ or body part or loss of function of an any organ or body part, any bodily damage, any pain the victim may suffer in the future, inability to be employed or any difficulties faced in obtaining employment as a result of any disability or incapacity and any psychological damages.

Victims of Torture, Ill-Treatment and Families to Seek Civil Redress

163. Although the Anti-Torture Act came into force in 2013, the Constitution encompassed a provision to obtain a remedy in Article 65 under fundamental rights and freedoms chapter. Additionally, Article 144 of the Constitution states that “when deciding a constitutional matter within its jurisdiction, a court:

- (a) may declare that any statute, regulation or part thereof, order, decision or action of any person or body performing a public function that is inconsistent with the Constitution is invalid to the extent of the inconsistency; and
- (b) may in connection with a declaration pursuant to Article (b) make any order that is just and equitable, including an order providing just compensation for any damage sustained by any person or group of persons due to any statute, regulation or action that is inconsistent with the Constitution”

164. To take steps to secure appropriate redress where human rights have been violated is one of the responsibilities and powers vested to HRCM under Article 192 of the Constitution of Maldives (2008).

165. It is important to note that the Anti-Torture Act is not clear on protection mechanisms afforded to victims of torture.

Authorities Legally Responsible for Offender’s Conduct and Obligation to Compensate

166. According to Article 54 of the Constitution, all individuals are free from cruel, inhumane or degrading treatment or punishment, or to torture. Article 16 of Anti-Torture Act asserts that it is an absolute right to everyone to be free from torture, cruel, inhumane or degrading treatment or punishment and that state of war, political unrest, increase rate of crimes, state of emergency are not exceptions or justifications for acts of torture, cruel, inhumane or degrading treatment or punishment. It is important to recall that the definition of torture elaborated in Article 10 of Anti-Torture Act encompasses physical, psychological torture and also acts of cruel, inhumane or degrading treatment or punishment. Similarly, the acts of

torture committed by the government officials along with private personnel are encompassed in the Article 9 of this Act. Moreover, in agreement with Article 11, “cruel, inhumane or degrading treatment” is inclusive of all acts of torture that does not fall under physical torture and psychological torture defined in Article 13 and 14 of this Act.

167. Committing an act of torture and cruel, inhumane and degrading treatment are criminalized, by Article 21 of Anti-Torture Act (13/2013). In line with Article 24 and 25, ordering, and helping and assisting in torture are considered as perpetrating an act of torture. Similarly, detaining a person in a place which is not prepared for and publicly announced as a detention centre under this Act, or incommunicado, or, detaining a person without informing about the location of the place, or detaining a person in an environment where it is possible to easily carry out acts of torture is a criminal offence under Article 22 of this Act. Additionally, Article 26 of this Act criminalizes an act of torture made possible by inaction or negligence of a member of law enforcement agency to prevent the torture while having the knowledge of it. Among other legislations, Article 7 of the Police Act explicitly states that it is one of the duties of all police officers to fully abide and comply with the Constitution, and laws and regulations of the Maldives. Correspondingly, prisoners are safeguarded against physical punishment which would harm them physically according to Article 96, 98 and 99 of the Prison and Parole Act.

168. The penalty ranges for committing acts of torture are imprisonment for 25 years, 15 to 25 years, 15 to 20 years, 10 to 15 years and 7 to 10 years depending on the severity of the crime, and 1 to 3 years for cruel, inhumane or degrading treatment or punishment in line with Article 23 of Anti-Torture Act (13/2013). While the aforementioned legislative provisions entail that an act of torture and cruel, inhumane and degrading treatment are criminalized in the Anti-Torture Act (13/2013), the Act remains silent about legal authorities being responsible for offender’s conduct. Thus, they are not obliged to provide compensation to the victims of torture and ill-treatment.

Rehabilitation and Reintegration of Victims of Torture and Ill-Treatment

169. Chapter 10 of Anti-Torture Act specifies establishment of rehabilitation treatment and education for the victims. Article 34 of Anti-Torture Act stipulates that ministry mandated to enforce health policies, Attorney General’s Office and HRCM to decide upon and publish rehabilitation programmes that would provide adequate treatment to and facilitate a life of dignity for the victims of torture and their families within one year of this act coming into force. While efforts must be undertaken to ensure full participation of human rights NGOs in the formulation of programmes and the rules of implementation of the programmes must provide for the role of NGOs in the running of programmes. Article 35 of the Anti-Torture

Act specifies similar rehabilitation programmes to be planned and implemented for the rehabilitation of people who commit acts of torture to facilitate their reintegration into society and to remove their inclination to acts of torture.

170. HRCM notes that although the Anti-Torture Act clearly states that the ministry mandated to enforce health policies, Attorney General's Office and HRCM are responsible for formulating rehabilitative and restorative programmes for victims, perpetrators and their families, the Act does not state which authority should be responsible for the implementation of these programmes.

171. HRCM is in the process of drafting the rehabilitation programme for victims of torture under Article 34 of Anti-Torture Act (13/2013). The programme will be drafted in collaboration with Ministry of Health, Ministry of Home Affairs, AGO, and the relevant NGOs. In addition, HRCM is currently in the process of reviewing the Anti-Torture Act to propose amendments to the AGO and the Parliament.

172. It has been identified in NPM visits that prisons offers educational and vocational programs to the convicts. However, there are no such programs designed to cater to the need of appropriate behaviour modification rehabilitation depending on the nature of the convicted crimes. Following are findings from NPM visits on the opportunities available to learn and enhance skills and education in different areas.

- In Maafushi Prison and Asseyri Prison, some prisoners serving their sentence are engaged with different vocational programs which includes, gardening, carpentry, arts and craft work, engineering and wiring programs as well.
- The number of prisoners who get the opportunity to take part in educational programs is less compared to the prison population and those persons held in high security units are not given the opportunity to engage in the vocational and educational programs offered by the prison.
- The opportunity to partake in prison training programs are only offered to those in low security units, and the prisoners in medium and high security units do not have the opportunity to apply for prison employment.

Recommendations

- 1. Formulate necessary regulations to ensure procedures are established, in accordance with Anti-Torture Act, to enforce effective restitution, rehabilitation and reintegration.**
- 2. Formulate remedies to restore respect for the dignity of the person.**

3. *Make necessary amendments to Anti-Torture Act to incorporate provisions on right to security of the victims and protect victim's health and wellbeing.*
4. *Make necessary amendments to Anti-Torture Act to clearly define the institutions responsible to implement the rehabilitation and reintegration programmes for victims, perpetrators and their families.*

ARTICLE 15: STATEMENTS MADE UNDER TORTURE ARE INADMISSIBLE

173. Article 52 of the Constitution, Article 5 of Anti-Torture Act and Article 83 of the Penal Code (9/2014) provides safeguards against torture for the purpose of obtaining confession or other evidence.
174. Despite these safeguards, issues of false confessions have been identified in torture cases investigated by HRCM. However, none of these cases has been prosecuted due to inadequate evidence.
175. During NPM visits to Kulhudhufushi Police Station and L.Gan Police Station in 2014, two cases were identified, where detainees were forced to confess by police officers. The cases were investigated by HRCM, however, due to inadequate evidence the cases were closed.

ARTICLE 16: COUNTRIES SHALL ALSO WORK TO PREVENT ACTS OF CRUEL, INHUMANE DEGRADING TREATMENT OR PUNISHMENT WHICH DO NOT AMOUNT TO TORTURE

Abduction of Journalist and Human Rights Defender, Ahmed Rilwan

176. Ahmed Rilwan Abdullah, a journalist for the local newspaper Maldives Independent (formerly known as Minivan News), went missing on August 8, 2014. He was last seen boarding a ferry to Hulhumale' on August 8, 2014 at 12:55 am and was reported as missing on August 13, 2014. Rilwan was a strong advocate for human rights who was vocal on rights issues both in his writings and on social media. Due to the nature of his work, Rilwan was subjected to threats over the months leading up to his disappearance, especially following an article where he covered the issue of Maldivians being recruited by Syrian jihadist movements.⁵ The HRCM started monitoring the case and submitted information to the UN

Working Group on Enforced or Involuntary Disappearances on August 14, 2014. HRCM has been following up on the progress of the police investigation of the case.

177. HRCM observed inconsistencies in the investigation by the MPS in to Rilwan's disappearance. MPS, in a news conference revealed that Rilwan was in fact kidnapped⁶ and release information that was cited in an investigation report published by the local NGO, Maldivian Democracy Network (MDN) and in newspapers since August 2014.⁷ It should also be noted that on previous occasions, including during meetings with the HRCM, MPS had stated that they did not have enough evidence to conclude that Rilwan was kidnapped. One of the suspects arrested and subsequently released in 2016, was later charged in 2017. However the local media reported that he had died in Syria.⁸ In August 2018, the Criminal Court acquitted the remaining two suspects, citing negligence and carelessness by MPS in their investigation and securing evidence.⁹

178. According to the latest information shared with HRCM by MPS during a meeting held on July 3, 2018, MPS is still investigating two more people in relation to this case.

Murders

179. From 2008 to October, 2018, 55 murders were reported in the media.¹⁰ While the MPS website publishes crimes statistics of the past 10 years, these statistics do not include murder.¹¹

180. In October 2012, Dr. Afrasheem Ali was brutally stabbed to death in the stairwell of his home.¹² One of the suspects arrested, Hussain Humaam, confessed to killing Dr. Afrasheem and was charged and found guilty of murder in the first degree and was sentenced to death.¹³ However, he retracted his confession later. According to a case study by Transparency Maldives,¹⁴ Humaam claims to have confessed under duress with the understanding that he will be spared the death sentence should he confess to murder. The sentence was appealed to the High Court of the Maldives and then the Supreme Court of the Maldives where the sentence was upheld.¹⁵ Although there has been a moratorium on the death penalty for nearly six decades, the state has been making preparations to go ahead with implementing the death penalty.¹⁶ With Humaam retracting his confession and the others implicated in his confession never being charged, there has been speculation surrounding the case.¹⁷ In addition to calls from civil society and international bodies to halt implementing the sentence and to review the case again,¹⁸ Dr. Afrasheem's family sent a letter to the Supreme Court of the Maldives before their verdict stating that they wished to delay the execution until there has been a full investigation in to the case.¹⁹

HRCM's investigation found that a comprehensive psychosocial assessment was not conducted prior to the prosecution of Humaam. In its investigations, HRCM has requested on multiple occasions to carry out comprehensive psychosocial assessment and to provide Humaam with the necessary psychosocial support.

181. In April 2017, Yameen Rasheed, an IT professional and blogger who led a public campaign to find Rilwan was found with multiple stab wounds in the stairwell of his home and died shortly after he was taken to the hospital.²⁰ According to news reports, the police investigations revealed that Yameen was killed by religious extremists.²¹ Seven people were charged in relation to the murder²² and the Court has started conducting closed preliminary hearings of the case despite calls from family and civil society to open the trial²³. Prior to his death Yameen received several death threats which he reported to the Police.²⁴ After his death, his family sued the police for failing to protect him; the suit was dismissed by the Civil Court but accepted by High Court.²⁵

182. In January 2015, 10-year-old Mohamed Ibthihaal was physically abused and murdered by his mother. After investigating the case, HRCM found State parties to be negligent as it was revealed that both the MPS and Ministry of Gender and Family were aware of the abuse and failed to protect him. The PGO has pressed charges against the negligent State officials in the case.

Threats and Violence against Reporters

183. In addition to the cases mentioned above, there has been series of threats on reporters and media in the past ten years. These includes the nearly fatal attack on former Raajje TV journalist, Aswad Waheed,²⁶ the arson attack on Raajje TV station's office²⁷ and attack on blogger and former editor of Haveeru, Hilath Rasheed.²⁸ Many journalists reported both in news reports and on social media about receiving threats via text messages and in 2014, in addition to warning texts received on the same day, reporters of Minivan News were threatened by lodging a machete into the office's door²⁹.

184. There are also news reports³⁰ of violence by the police against reporters covering protests; some of these incidents were observed by HRCM in its protest monitoring work.

Police Brutality during Protests

185. According to the cases reported to HRCM, it was evident that demonstrators subjected to excessive use of force at the time of arrest remained highest in 2012. It was also evident from the cases reported that during dispersal of demonstrations MPS used disproportionate

force which was at times discriminatory towards people based on their political affiliations, excessive and disproportionate use of pepper spray at protestors, inconsistency in issuing warnings before dispersal and obstruction of media.

186. While Freedom of Peaceful Assembly Act (1/2013) encompasses positive developments, HRCM raised concerns over provisions of geographical limitations, lack of guidance on control of counter assemblies and requirement to accredit reporters.

Conditions of Imprisonment and Detention Facilities:

- Food and water

187. Over the past years, NPM received various complaints regarding access to clean water and food, and the complaints have increased over the past three years.

188. During the visit to Maafushi Prison in 2017, NPM observed that the kitchen was unhygienic and could possibly contribute to health hazards. NPM also received complaints by prisoners regarding the low quality of food. And while the State report says that *“special food must be arranged for those prisoners who require special diet due to medical conditions”*, NPM observed that detainees/prisoners with heart conditions, gastric problems, diabetes and other special requirements are not given appropriate food as was prescribed by the doctors.

189. In Dhoonidhoo Police Custodial, while they follow a set menu for all the detainees, NPM observed that the quality of the food was not up to standard. In 2016, NPM has recommended that clean and quality food be provided for the detainees.

190. In some cells in Dhoonidhoo Custodial, water used for drinking and other needs came from a pipe that was located in the toilet. After testing a sample of this water and finding bacteria in it, HRCM has recommended that the Custodial take necessary measures to solve this issue.

- Medical Care

191. According to NPM observations, medical officers are stationed at three facilities; Maafushi Prison, Asseyri Prison and Dhoonidhoo Police Custodial. In case of emergencies, detainees are transferred to health centres, regional/atoll hospitals, IGMH or private hospitals in Male’.

192. In case of specialist consultations, medical officers can request for an appointment from IGMH; it usually takes 3 to 4 months to get an appointment. If it is an emergency, the detainees on the waiting list for the appointment are transferred to private hospitals in Male’.

- Conditions of Cells

193. NPM identified inadequate cross ventilation and lighting in prison units and recommended to improve the conditions and to change the infrastructure so that they are in line with the Nelson Mandela Rules. NPM has recommended to take necessary measures to address the issue of over-crowding in cells.

Solitary Confinement

194. Disciplinary segregation is not prohibited under domestic laws. Article 95 of the Prison and the Parole Act states that a prisoner may be kept separate from others for a period not exceeding 30 days as a penalty if found guilty of a prison offence listed under Article 90.

195. During visits to Maafushi Prison in 2016, 2017 and 2018, NPM observed that the facility has built new remand units which included two solitary confinement cells. The prison already had a solitary confinement block with two units, and while NPM was informed these units were no longer in use, NPM identified, by means of reviewing documents and interviews with detainees, that these cells were still in use.

196. In 2014, a special protection unit was built to accommodate former president Mohamed Nasheed, where he spent his confinement without the opportunity for meaningful human contact till he was sent abroad for medical purposes. And since 2015, more such special protection units were installed to detain several political leaders and persons holding public office.

197. While there are regulations in place as stated in the State Report with regard to disciplinary measures against inmates, NPM has observed that this has not been the practice and that detainees are not given opportunity to defend themselves, even before placing them under solitary confinement.

198. Article 96 of the Prison and Parole Act states that if a decision is made to separate a prisoner from others, the Director of Prison should be immediately notified and that a Prison Order must stipulate the minimum privileges that the prisoner must receive during this period. According to NPM findings, prisoners in solitary confinement are deprived of family visits and contact with family. And sometimes those moved to solitary confinement spend months without the opportunity to go outside their cells for walking or exercising.

Female Prisoners

199. As reported in the State report, there is a stipulation in the Prison and Parole Act that states that the regulation made under the Act must contain the rules for the place of detention of female prisoners with children below 2 years of age, and that medical care and food be provided to the child. However, such a regulation or policy is yet to be enacted.
200. During the visit to Kulhudhufushi Police Station in 2017, NPM identified that although male and female detainees were kept in separate cells, they were kept in the same area. Additionally, the toilet and the shower room is open, thus they are afforded no privacy, making them vulnerable.

Other Issues

201. While family visits and lawyer visits are provided according to the regulations of respective detention facilities, during the visit to Maafushi Prison in 2012, NPM identified that both the detainees and visitors were strip searched before and after family visits. NPM has put forth a recommendation to MCS to review the prison local order governing the administration of strip searches. Complaints of unreasonable strip searches are still notified during visits to police stations, police custodial and prison visits. Some detainees were also strip searched at the time of arrest without a reasonable cause. In 2016, female journalists arrested while covering protests reported that they were subjected to unnecessary strip searches while brought for custody to Male' Custodial.
202. Only Maafushi Prison has the infrastructure and arrangements for conjugal visits. NPM received complaints by inmates of them and their spouses having to undergo searches before and after they enter the prison premises for their visit. Although NPM has recommended to abolish this practice, and the institution has informed the NPM during evaluation of implementation status of NPM recommendations that they no longer follow this practice, NPM continue to receive complaints from prisoners stating this practice is still the norm in the prison.
203. HRCM found that some detainees in detention facilities are being deprived of the opportunity for walking and exercising as granted under the Prison and Parole Act. In addition, some detainees in Dhoonidhoo have complained that they are hand cuffed whenever they are taken outside their cell for exercise. Furthermore, HRCM found that detainees only get opportunity to go out of their cells for medical needs or when they are given the opportunity to make a phone call.

Recommendations

- 1. Amend the Freedom of Peaceful Assembly Act (1/2013) in compliance with ICCPR.***
- 2. Conduct impartial and prompt investigations into cases of abductions and murder.***
- 3. Ensure that due process is followed during court proceedings to bring the perpetrators of the crime to justice***

Appendix

Training conducted by other institutions				
Understanding interpersonal trauma and its possible impact	2017-3 days	Understanding interpersonal trauma, and its possible impact on the professionals providing services	Maldives police force both police investigators and island patrol	MPS
Advance Child Interviewing Techniques Course	21st April 2017 to 19th May 2017	interviewing child victims of abuse, especially sex abuse, in recalling and recounting sensitive, personal and abusive experiences	18 investigation officers from different departments	Conducted by Institute of Security and Law Enforcement, with the aid of Family and Child Protection Department and UNICEF
Understanding the Dynamics of Sexual Crime, “Whole Story” Investigation Methodology, and Sexual Offence Suspect Interviewing		Understanding the dynamics of sexual crime, including myths and misconceptions. Victimology, grooming and offender tactics. Whole story investigation techniques. Sexual offence suspect interviewing–theory and practice		Conducted by Institute of Security and Law Enforcement, with the aid of Family and Child Protection Department and UNICEF
Child Safe Tourism		protect children from sexual exploitation in tourism	the operational staff of working in the resorts, and the managers of guest houses in B.Atoll	Conducted by Family and Child Protection Department of Maldives Police Service with the aid of Ministry of Tourism and UNICE
Suspect Interviewing	5th December 2017 to 13th December 2017	Understanding the dynamics of sexual crime, including myths and misconceptions. Victimology, grooming and offender tactics. Whole story investigation techniques. Sexual offence suspect interviewing – theory and practice.	20 investigators	Conducted by Institute of Security and Law Enforcement, with the aid of Family and Child Protection Department and UNICEF
use of force instructor Qualification course:	2016	Use of force Techniques: Moral and legal Aspects of use of Force. Non-lethal weapons techniques .Handcuff and Searching, Soft Empty Hand Control techniques, Public order Training, Field training exercises	It is mandatory for all the police officers to undergo (Baton, pepper and soft empty hand techniques) course-25	police
First line management course	2018	Operational Studies, Policing Studies, Operational Fitness	28	
Self-defense course:	2016/ 2017	Self-defense Techniques	2016-19 2017-42	the police officers
Professional training for custodial officers:	2016/ 2017	The custodial system, Escort security, Stress management, Communication skills and verbal, Identification and handling narcotics, Field first aid, Operational tactics, Responsibilities and duties of the human Rights commission, Prosecutor general office (jobs and responsibilities),Maldives correctional service (their Duties and responsibilities)	2016-36 2017-114	Custodial officers currently working at the Custodial Department of the Maldives Police Service
Rapid entry training:	2016/ 2017	Concepts of tactical breaching operation, Building clearance and Tactical raid, Tactical Breaching exercises	2016-12 2017-12	
Drug enforcement training course:	2016/ 2017	Criminal procedures, Professional ethics	2016-24 2017-31	
Junior officer command course:	2018	Security studies, Legal studies, Investigation, Policing studies	28	
Public order training course:	2016/ 2017 /2018	Relevant laws, Riot policing drills, Concept of public order unit, Physical training, Situation handling, Final exercise	2016-126 2017-181 2018-98	

Diploma in policing:	2016	Sociology, Introduction to forensic science, Introduction to forensic investigation, Crime and criminal justice system, Contemporary challenges in policing, Police culture and policing in Maldives ,Law and legislative studies, Theories and concepts of policing	58	
certificate level 1 in custodial supervision		Search People & Properties, Leadership, Unit Occurrence, Master Parade, Dynamic Security, Escort Procedure, Cell inspection, Emergency Sequence, Unit Privileges, Unit Administration, Operational Report Writing and Role of Officer.	172 participants	MCS
certificate level 2 in custodial supervision		Search People & Properties, Leadership, Unit Occurrence, Muster Parade, Dynamic Security, Role of Officer, Cell Inspection, Emergency Sequence, Unit Privileges, Unit Administration, Operational Report Writing, Escort Procedure, Basic Fire Fighting and Ethics.	73 participants	MCS
certificate level 3 in custodial supervision		Rules & Regulation. Role of Officer, Organizational Process, Prisoners Information Management System, Leadership. Ethics & Values. Drill. English, Dhivehi, Mathematics, Personal Development, Privileges, Effective Planning & Report Writing, Fire Fighting and Handling disciplinary problem and managing conflict.	7 participants	MCS
certificate level in custodial Management & Security Program		Physical mining, Foot drill, Emergency Procedure, Swimming, Restraint, Self Defense, Observation Techniques, Introduction to Use of Force, Search People & Properties, Leadership, Ethics, First Aid, Incident Report. Radio Voice Procedure. Occurrence Book, Accounting for Prisoner. Reception Procedure, Special Category for Prisoner, Dynamic Security. Video Camera. Locks& Keys. Scenario. Work Place Observation. Passing OUI Parade and Final Assessment. Total 03 batches were completed in this course.	79	MCS
certificate level in custodial supervision Security and Operational Management		Primary Response Team Formation, Restraint & Escort, Officer Safety Training, Search People and Properties, Leadership and Management, Communication, Fire Fighting, Legislation and Prisoners Information Management System.	60 participants	MCS
Bachelor Science in Security and law Enforcement Studies	2017		128	
Diploma in Security and law Enforcement Studies	2017		139	
Diploma in Forensic Investigation	2016		25	

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- ¹HRCM (2014). *UPR Submission from HRCM Submission to the Universal Periodic Review of the Maldives, April –May 2015 (22nd session) September 2014*. Retrieved on 9th October 2018 from http://www.hrcm.org.mv/Publications/otherdocuments/UPR_submission_Sept_2014.pdf
- ² Information provided Maldives Police Service 2018
- ³ Maldives (2015). *Third and fourth periodic reports of States parties*. Retrieved 9th October 2018 from https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMDV%2f4-5&Lang=en
- ⁴Article 48 of Constitution (2008) of the Republic of the Maldives Rights on arrest or detention: Everyone has the right on arrest or detention:(a) to be informed immediately of the reasons therefore, and in writing within at least twenty four hours; (b) to retain and instruct legal counsel without delay and to be informed of this right, and to have access to legal counsel facilitated until the conclusion of the matter for which he is under arrest or detention; (c) to remain silent, except to establish identity, and to be informed of this right; (d)to 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.
- ⁵ Maldives Independent (2018). *The disappearance of Ahmed Rilwan: A timeline*. Retrieved on 9th October 2018 from <https://maldivesindependent.com/crime-2/the-disappearance-of-ahmed-rilwan-a-timeline-139741>
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Members Present

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Mr. Moosa Ali Kaleyfaan (Commission Member)

Ms. Naiween Abdulla (Commission Member)