

STRENGTHENING CUSTODIAL SERVICES IN THE MALDIVES

**Professor Richard Harding
and
Dr Neil Morgan**

**Prepared for the Attorney General and the Ministry
of Home Affairs of the Maldives**

December 2004

CONTENTS

INTRODUCTION	3
1 September 2003 and its Aftermath	
1 Terms of Reference and Project Team	
1 Methodology	
THE PRISON POPULATION: DRUG OFFENDERS	8
1 The Prison Population	
1 Drug Laws and Drug Offenders	
1 What to do with Drug Offenders?	
THE PRISON POPULATION: UNSENTENCED PRISONERS	14
1 The Unsentenced Prisoner Population	
1 Authority and Responsibility for Unsentenced Prisoners	
1 Dhoonidhoo Detention Centre	
1 Detention for Investigation	
1 International Standards and Monitoring	
NON-CUSTODIAL SENTENCES	20
A LEGISLATIVE FRAMEWORK	22
MAAFUSHI PRISON TODAY	24
1 The Need for a Master Plan	
1 Perimeter Security	
1 The Unsafe Internal Environment and the Achievement of Security	
1 Under-Investigation Prisoners	
1 Drug Rehabilitation Courses	
1 Accommodation for Women Prisoners	
1 Remaining Security Issues	
1 Staff Recruitment and Training	
1 Management Needs	
1 Conclusion	
MEDICAL FACILITIES AND SERVICES	36
WORK	38
WOMEN PRISONERS	40

1	The Population	
1	The Conditions	
1	The Issues	
	REHABILITATION PROGRAMS AT MAAFUSHI	43
1	Drugs	
1	Other Offences	
	INSPECTIONS AND COMPLAINTS	46
1	Inspections	
1	The Jail Oversight Committee	
1	The Human Rights Commission	
1	Individual Prisoner Complaints	
	PRISONER DISCIPLINE: INCENTIVES, PRIVILEGES AND PUNISHMENT	50
1	Discipline and Control at Maafushi	
1	Collective Punishment	
1	Privileges and a Code of Conduct	
1	Separate Confinement as a Punishment	
	PAROLE AND HOME LEAVE	53
1	The Nature of Parole	
1	A Parole System in the Maldives?	
1	The Outline of a Parole Scheme	
1	Home Leave	
	MULTIPLE OFFENCES	59
1	The Nature of the Problem	
1	Addressing the Problem	
	CONCLUSION	62
	SUMMARY OF RECOMMENDATIONS AND FOUR-YEAR IMPLEMENTATION PLAN	64
	BIBLIOGRAPHY	74

INTRODUCTION

1. September 2003 and its Aftermath

The Maldives is in a period of significant change and, across all sectors of government, there are wide-reaching proposals for fundamental reforms with respect to issues of governance and justice. This movement has been under way for some time, but a defining moment occurred on 19 September 2003 at Maafushi prison. At the time, the prison, which was holding around 1,100 inmates and grossly overcrowded, was under the authority of the then Department of Corrections, and subject to the general security control of the National Security Services. A young man was killed by the security services and serious riots then ensued. During the course of the riots, three other prisoners were shot and killed and many other people were injured, some seriously.

The September 2003 Incident, as it is known, received international media coverage, and it is clear that it deeply affected the psyche of the Maldivian people. It provided the catalyst for a number of responses, as well as further support to some initiatives that had already commenced. In this sense, the prison system of the Maldives is inextricably linked with wider social and political developments in the country. For present purposes, the key responses and initiatives have been as follows:

- ¹ Following the September 2003 Incident, the President pardoned around 800 inmates who were released and allowed to go home.

- ¹ In September 2004, the operations of the police were formally separated from those of the National Security Service and the Department of Penitentiaries and Rehabilitation Services (DPRS) was established, also under separate management and command. The DPRS is now under the Ministry of Home Affairs and has formal responsibility for running Maafushi Prison.¹ The police, too, are now under

¹ See below for discussion of the continuing police role on Maafushi and in the management of people held at Dhoonidhoo under investigation.

the Ministry of Home Affairs rather than the Ministry of Defence and National Security.

- ¹ On 9 June 2004, the President announced a number of proposed constitutional changes, including direct presidential elections, provision for opposition political parties to operate, the establishment of a judiciary independent of the executive arm of government and the setting up of a Human Rights Commission.
- ¹ The country is embarking on what is intended to be a wide reaching law reform agenda, both in the context of criminal justice (including proposed new Penal and Criminal Procedure Codes) and in a more general human rights context.

Although both general human rights reforms and prison reforms are underway, the September 2003 incident continues to be a very sensitive issue, and we were told of a riot at Maafushi Prison on the first anniversary of the incident. There was also some civil unrest in Male' on 12-13 August 2004, and we met a number of people who are still detained, in police custody and under investigation, following these events.

2. Terms of Reference and Project Team

The purpose of this project was to provide advice to the Maldives government on the strengthening of custodial services, with a focus on maximizing 'rehabilitation and reintegration while minimizing reoffending and relapse.' Specifically, the terms of reference requested the consultants to:

“Review the existing management, rehabilitation and reintegration mechanisms in the Maafushi prison and the Department of Penitentiaries and Rehabilitation Services (DPRS), and detention centres of minors and women and advise the government on the following:

- ¹ Accommodation and housing and provision of medical and other facilities of inmates;

- 1 Rehabilitation and reintegration programmes necessary for minimizing repeat offending;
- 1 Suitable jail inspection and complaints hearing mechanism to be established;
- 1 System of early release and parole programmes, and aftercare services to facilitate rehabilitation and reintegration;
- 1 Regulations and procedures on administration of sentences which would prescribe for accounting of multiple sentences, home and sick leave, solitary confinement and detention;
- 1 Mechanism to deal with offences in custody;
- 1 Jail management and institutional strengthening of the staff;
- 1 Institutional and human resources development of the DPRS.”

Professor Richard Harding and Dr Neil Morgan were appointed as consultants for this mission. Professor Harding is the Inspector of Custodial Services for Western Australia (www.custodialinspector.wa.gov.au) and Emeritus Professor of Law at the University of Western Australia. His services were made available by the Western Australian Government (the Hon. Michelle Roberts, Minister for Justice) on a goodwill basis by way of government-to-government arrangement. Dr Morgan is Director of Studies at the Crime Research Centre at the University of Western Australia (www.law.uwa.edu.au/crc/) and a member of the Western Australian Parole Board. They have each played key roles in the Asian and Pacific Conference of Correctional Administrators (www.apcca.org), the leading regional prisons organization, for many years, and Dr Morgan is at present the Executive Secretary of APCCA.

3. Methodology

This report reflects the information gathered from a wide range of consultations and field visits. We made two lengthy visits to Maafushi Prison on Sunday 5 December and

Thursday 9 December, during which we held discussions with inmates and staff, inspected the physical conditions and layout of the prison, and considered proposed redevelopment plans. Maafushi houses a complex mix of inmates, embracing sentenced prisoners, around 60 inmates who are still under police investigation, and a large number of people who are no longer under police investigation but are awaiting trial. We also visited the HimMaafushi Drug Rehabilitation Centre and the Dhoonidhoo Detention Centre, again speaking to both staff and inmates. HimMaafushi is run by the National Narcotics Control Bureau and is designed mainly for drug addicts who have not been convicted of criminal offences. Dhoonidhoo is run by the Police and is used for the detention of people who are still ‘under investigation’.

In addition to regular discussions with the Attorney General, Dr Hassan Saeed and his senior staff, we consulted the following key stakeholders and organisations:

- 1 The Minister of Defence and National Security, Mr Ismail Shafeeu.
- 1 The Acting Minister of Justice Dr Mahmud Shougee and the Chief Judge of the Criminal Court Mr Ahmed Jamil.
- 1 The Deputy Minister of Home Affairs, Mr Abdul Azeez Yoosuf.
- 1 The Minister of Gender, Family Development and Social Security, Ms Zahiya Zareer, and members of her staff.
- 1 The Minister for Planning and National Development, Mr Hamdun A Hameed.
- 1 The Director of the National Narcotics Control Bureau (NCB), Ms Khadeeja Adam, and Bureau staff.
- 1 The Commissioner of Police, Mr Adam Zahir, and other senior officers.
- 1 The President’s Jail Oversight Committee.
- 1 Mr Ahmed Mujuthaba, Chair of the Human Rights Commission.
- 1 The Parole Board.
- 1 UNICEF representatives.
- 1 UNDP representatives.

All of these people spoke frankly about their concerns and about proposals for change. We thank them for their insights and honesty. We were very impressed with the

diligence and commitment of the people to whom we spoke, from all these agencies. They provide an invaluable resource upon which future improvements can be built. This report combines what we learned through these consultations with a consideration of relevant national and international literature, including recent reports by other consultants to the Maldives government, UNICEF and UNDP (Robinson, 2004 and 2004(a); Alder and Polk, 2004 and 2004 (a); UNDP, 2003; Macdonald, 2003).

THE PRISON POPULATION: DRUG OFFENDERS

1. The Prison Population

In theory, there are two possible approaches to a mission of this nature. The first is to assume that the prison population will remain broadly as it is currently constituted and to consider possible improvements in the management of that inmate population on the basis that it is a 'given'. The second is to take a step back and to consider issues surrounding the current make-up of that population. It rapidly became apparent that the second approach was the only possible approach in the context of the Maldives. Good prison management strategies can only be developed against the backdrop of the prison population in any given jurisdiction; and at present, two groups – drug offenders and unsentenced prisoners - are dominating the Maldives system and distorting its operations.

Drug offenders and people charged with drug offences constitute at least 80% of the prison population and often face very long periods of incarceration, even for the possession of small amounts of narcotics. The prison also houses a very large number of what we will call 'unsentenced prisoners'. This latter group comprises two distinct sub-categories: those who are still under investigation by the police and those who are awaiting trial following the completion of police investigations. When we visited Maafushi, the total prisoner population was around 370, of whom around 60% were unsentenced. This is, in international terms, a very high figure (APCCA 2004, Appendix One). Rather than simply accepting these levels of drug offenders and unsentenced prisoners, it became important for us to consider possible mechanisms to reduce their numbers at Maafushi.

If the number of minor drug offenders and unsentenced prisoners at Maafushi can be reduced, the prison will be able to operate far more efficiently and effectively. *This is a matter of considerable urgency because many of the drug users who were released after*

the September 2003 Incident are now returning to prison for drug related offences, along with a new cohort of offenders.

Recommendation 1: The development of custodial services should be undertaken in conjunction with strategies to address the high rates of incarceration of drug users and unsentenced people.

2. Drug Laws and Drug Offenders

Section 1 of the *Law on Narcotic Drugs and Psychotropic Substances* (Law Number 17/77) provides stringent penalties for drug possession, importation, production or trade:

- ¹ Where the amount is one gram or less, the sentence is between five and twelve years' banishment, imprisonment or house arrest.
- ¹ Where the amount is more than one gram, the person is deemed to be a trafficker and must be sentenced to life imprisonment.
- ¹ Repeat offenders under these laws are to be sentenced to the severest penalty that is prescribed (ie 12 years for possession of one gram or less).

Everybody to whom we spoke expressed concern about the impact of the Maldives' stringent drug laws. The Police Commissioner stated that, in his view, the laws are not working well and there was uniform agreement that the laws are, in effect, creating an underclass of young people, some of whom go into prison as drug users and emerge as more hardened criminals. These comments are consistent with the views of consultants who have recently examined the specific issue of drug use:

“Some rough estimates suggest that there are more than 800 drug users currently in prison.² These persons have no access to counselling or rehabilitation.... Families fear that their young and impressionable relatives will actually become more criminal by their being jailed along with other

² This report was written when the prison population was around 1,000.

criminals. A lack of any therapeutic intervention means that very little is done to motivate drug users to quit their habit. Banishment of drug users to different islands was felt to be counter-productive ... because it only displaced the problem from one region to another.” (UNDP, 2003, 62-63)

“Imprisonment in poor and overcrowded conditions has led to socialization into criminal/drug related behaviour in prison, leading to an increased risk of repeat offending on release and the attendant costs for the individual, the family and the community. It would appear that in the Maldives, the overuse of imprisonment has reduced its deterrent effect and that for many youth incarceration has become a common occurrence. The penalty of banishment to another island is likely to have the unintended consequence of a ‘contamination effect’ where drug knowledge and information is shared with local youth by the banished drug user.” (Macdonald, 2003, 2.1.3-2.1.4)

In summary, all appear to agree that the current drug laws are harsh, costly and counterproductive. They are harsh in the sense that mere users face very long periods of incarceration without the prospect of treatment for their addiction, and with no prison based incentives or a properly structured parole system. They are costly because of the long periods of incarceration. They are counterproductive in that they appear to consolidate - or even to create – criminal careers; and, given the levels of drug use, they do not seem to be acting as a deterrent. Young people thus become “a burden on the country’s development process rather than making a positive contribution to it.” (Macdonald, 2003, 2.5.2.)

3. What to do with Drug Offenders?

Reports paint a disturbing picture of drug abuse (heroin in particular) amongst young Maldivians. Given the relative youth of the population, this is a matter of national importance and something that will need to be tackled through education and prevention strategies as well as the criminal law. Some of the people to whom we spoke argued that

more should be done to reduce supply but it was agreed that interdiction can never be wholly successful. We were also informed that drug abuse is especially problematic amongst young people in Male', many of whom have come to the capital for education.

For these reasons, it is essential for the justice system to adopt an appropriately targeted and coordinated approach to drug possession and use. At present, there seems also to be a lack of fit between the target population and the resources that are available to address drug abuse issues. On the one hand, there is a large number of drug offenders detained in rather bleak conditions at Maafushi Prison, without access to any treatment programs (but apparently with continuing access to drugs). On the other hand, the NCB's Drug Rehabilitation Centre (DRC) on HimMaafushi was, on the day of our visit, only half full. It was housing around 70 clients out of a capacity of 140. In addition, a new building was under construction for a further 200 clients.

The DRC operates on a Therapeutic Community model (TC), under which clients go through a number of stages and are rewarded by increasing levels of responsibility and authority. When clients are released, they are followed up for a period of time and the NCB reported a reasonable success rate (around 65%) over this time. It appears that some potential clients are not keen on the TC model and the NCB informed us that they are considering the development of other approaches as well.

There appear to be two main avenues for referral to the DRC; a voluntary admission or an admission that is triggered by a police referral. The policy is to give some first time, non-violent offenders who have been convicted of minor possession offences the option of undertaking the DRC program in lieu of being processed through the normal courts. Successful completion of the DRC means that the alleged offence will not be further prosecuted. However, this practice has no statutory basis, and is simply a matter of policy. As the Police Commissioner said, it is not appropriate to sustain this approach on such a basis for the long term; it is a process that should be given clear statutory authority and a statutory framework.

The NCB is concerned at its small number of clients and we asked them whether the DRC would be able to cope with an influx of prisoners and/or people referred by the courts. They said that, given appropriate resources, they would be able to provide sufficient counselling, medical and security services.

In summary, the problems facing the prison system cannot be addressed unless there is a coordinated and strategic approach to reducing both the flow of new offenders into the system and recidivism rates following release.

Recommendation 2: The following strategies should be adopted in order to ensure a more targeted approach to drug offenders, a better use of resources and an improved prison system:

(a) Amendments to the *Law on Narcotic Drugs and Psychotropic Substances* to:

- ¹ Reduce the very high minimum penalties that currently apply;**
- ¹ Remove the presumption that possession of more than one gram is ‘trafficking’; and**
- ¹ Remove the provision that the maximum penalty must be given to repeat drug offenders.**

(b) Legislation to clarify the scope and operation of police referral practices to the DRC.

(c) Developing a system whereby the courts are able to send appropriate offenders to the DRC regime rather than to prison.

(d) The DRC to continue with the current TC model but also to consider other possible approaches.

(e) In line with our general proposals for an incentive based prison regime and for a parole system (below):

- ¹ Develop a model whereby prisoners may be able to move from Maafushi to the DRC and thence to parole.**
- ¹ Parole decisions to take account of treatment program participation.**

(f) NCB to provide drug treatment programs at Maafushi Prison to those offenders who, for security reasons or because of the nature of their offence, must be detained in that facility.

Throughout the system, there needs to be a recognition that people who suffer from drug addiction may well suffer some relapses on the road to rehabilitation.

THE PRISON POPULATION: UNSENTENCED PRISONERS

1. The Unsentenced Prisoner Population

As already noted, over 60% of the Maafushi inmates are unsentenced prisoners, a very high figure in international terms. Some of these inmates are still under investigation and the remainder are awaiting trial or disposition. It was not entirely clear how many fell into each category, but it seems likely that around 60 Maafushi prisoners were still under investigation at the time of our visits.

In addition to the Maafushi Prison, there is a detention centre for persons under investigation at Dhoonidhoo, a small island around 5 minutes from Male' by motor launch. On the day we inspected the facility (Tuesday 7 December), there were 75 available cells and 48 detainees. We also saw a new accommodation block which, when opened, will be able to accommodate another 60 inmates – coincidentally, around the same number of 'under investigations' detained at Maafushi.

2. Authority and Responsibility for Unsentenced Prisoners

As noted earlier, responsibility for Maafushi Prison has been transferred to the DPRS from the National Security Services / police. However, the prison is clearly still in a period of transition. There was some ambiguity with regard to the control of detainees; nominally, they are DPRS prisoners yet it is the police who decide the timing of their release. Some DPRS officers expressed the view that the police also have a strong influence on their disposition within the prison. Furthermore, following the separation of the police from the National Security Services, both the police and the DPRS are now under the same Ministry – namely the Ministry of Home Affairs. The Dhoonidhoo Detention Centre is directly under police control.

The current system of detention for investigation is strongly linked to the reliance that is placed by the criminal process on confessional evidence. Virtually everyone to whom we spoke had concerns about this situation and Professor Robinson (2004, paragraph 1.5) has already recommended that there should be less reliance on confessions. We endorse that recommendation.

The Police Commissioner informed us that the police would prefer that all people who are under investigation should be held in custody in one facility; and indications are that many of those currently detained ‘under investigation’ at Maafushi will be transferred to the new block at Dhoonidhoo. However, if the criminal process shifts its focus away from reliance on confessions, there will be no need for a separate category of prisoners under investigation; they will simply be unconvicted persons awaiting trial.

Obviously, the criminal justice system is currently in transition. However, we have concerns about the current situation at Dhoonidhoo (see below). Furthermore, international standards and best practice dictate that custodial services should be performed by specialist custodial personnel; and that it is inappropriate in principle for the agency that is charged with investigations to undertake this role. The issue has particular resonance in the Maldives (and especially amongst inmates) because the events of September 2003 occurred against the backdrop of a brutalizing prison regime that was overseen by police/national security service personnel.

Recommendation 3: That a commitment be made in principle for both Maafushi and Dhoonidhoo to be managed solely and directly by the DPRS; and that the necessary transfer arrangements be made as soon as DPRS staffing and skills have been developed as necessary.

There are other potential management benefits in such a transfer. Dhoonidhoo would become another DPRS facility and, whilst it might continue to be used primarily for holding people under investigation, some of its capacity could be used for other special

purposes. For example, the new block, with its high levels of security, might be used for high-risk sentenced prisoners.

3. Dhoonidhoo Detention Centre

The conditions we found at Dhoonidhoo were a great disappointment to us. The cells themselves were of a reasonable size, appropriate bedding was supplied and there were toilet and washing facilities, though the latter were somewhat inadequate. However, there were acute regime problems. Apart from a handful of prisoners whose cell doors were unlocked from 7.00 am to 9.00 pm – and who were allowed to move about to a distance of two metres from the cell door – the detainees were confined for 24 hours per day, with no opportunity for exercise. The police told us that they were concerned that the detainees would cause problems for staff and would refuse to return to their cells if allowed out.

Detainees complained about the use of handcuffs and, at the time of our visit, one prisoner was handcuffed in his cell. He said he had been handcuffed for 46 days and that the cuffs were only removed for 15 minutes per day to allow him to use the toilet and to wash. Another cell was occupied by three prisoners. There was, quite literally, insufficient room for all three to lie down at the same time. Some other cells had two people in them; and yet there were many empty cells. The newly constructed accommodation block is, in some respects, better than the existing cells. However, in one crucial respect – access to air and light – it is considerably worse.

Detainees under investigation appeared to have virtually no communication with family, friends or legal representatives, making it difficult for them to challenge their continued detention.

4. Detention for Investigation

A number of detainees had been held at Dhoonidhoo for a substantial period, and those associated with the August 12-13 incidents in Male' had been there for well over 100 days. Many detainees complained that the police were rather slow to interview them after their detention. It was difficult to envisage what further investigations were still required after such a period. We were informed that detention is reviewed at regular intervals, as follows:

- ¹ 7 days after the person is detained, the case is reviewed by a committee set up under the President's authority. This committee must decide whether the period of detention is to be extended, up to a maximum of 15 days more.
- ¹ At the end of this period, the case is referred to a judicial officer, who is able to order further detention for a 'reasonable period.'
- ¹ Thereafter, the case is again to be judicially reviewed.

Our impression is that the current system of review may be an improvement on what preceded it, but that it is still not providing effective safeguards for those who are under investigation. Prisoners told us that the extension of the period was virtually automatic if the police stated that they needed more time; and that there is little judicial review of *detailed reasons why* more time is required. Several other agencies expressed similar concerns.

Some of the difficulty may lie in the apparent lack of legal representation for detainees and the fact that they seemed to have little or no communication with family or friends. It is also for the police to initiate reviews. One detainee claimed that his extended period had elapsed and that he was therefore being detained illegally. However, there was no mechanism by which he could challenge his continued detention unless the police activated the issue by taking him back to court.

Recommendation 4: That the system of judicial review of warrants for detention be strengthened by requiring the police to establish, on the balance of probabilities, that there is a reasonable basis for the person’s continued detention and that no option other than detention is appropriate.

We were informed that a new bail scheme has been drawn up and that it is expected to become operational in January 2005. We have not seen the details of the proposed bail scheme but strongly endorse the concept of bail.

Recommendation 5: That the new bail scheme be implemented at the earliest opportunity.

5. International Standards and Monitoring

The conditions we observed were in breach of numerous international standards. In particular, the following breaches seem, prima facie, to have occurred:

- ¹ *United Nations Standard Minimum Rules for the Treatment of Prisoners*: Articles 9(1), 15, 21(1), 33, 37, 84(2), 86, 89 and 92.
- ¹ *UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment*: Principles 1, 4, 6, 16(1), 19, 21(1) and 27.
- ¹ *The United Nations Convention Against Torture*: Article 2(1).³

The Human Rights Commission has visited Dhoonidhoo on three occasions since the events of August 12-13 2004, and has apparently made a number of recommendations (including specific matters such as the use of solitary confinement and access to educational materials). However, it is not clear whether and to what extent these recommendations have been acted upon.

³ These provisions relate to such matters as: sleeping accommodation; hygiene; exercise; use of restraints; opportunity to communicate with families; presumption of innocence; availability of work; visits; right to be treated with regard to the inherent dignity of the person; notification of transfer; improper use of detention so as to facilitate confession. Some of the provisions overlap with each other in their scope. However, it is evident that there are numerous substantial breaches of applicable international standards.

In the context of the events of September 2003, the continuing breach of international standards is a cause of great concern. In addition to the recommendations that we have already made, it is important to ensure monitoring by appropriate Maldivian agencies.

Recommendation 6: That the situation of persons under investigation at both Maafushi and Dhoonidhoo should be proactively and regularly monitored by both the Human Rights Commission and the President's Jail Oversight Committee.

NON-CUSTODIAL SENTENCES

In understanding the Maafushi prison population, another important contextual issue relates to the use of alternatives to imprisonment. We have already recommended that immediate attention be given to the greater use of the Drug Rehabilitation Centre and it is also necessary briefly to consider other community based options.

At present, a significant number of people are held under house arrest or a system of banishment. Although we do not have precise figures, it appears that around 600 people are under sentence of banishment, considerably more than the present Maafushi prison population. As we understand it, banishment consists of offenders being sent to an island other than their home. This scheme raises some problems in principle and in practice. Robinson (2004) suggested that it can cause excessive hardship to poor offenders but little inconvenience to the rich. We were also told of cases where the wrong type of offenders (such as child sex offenders and serious drug dealers) have been banished – in effect, simply exporting serious problems from one island to another.

There was general agreement (though it was not a uniform opinion) that banishment should be abolished. In principle, we agree with this; *in our view, it would be preferable for non-custodial penalties to be developed which focus on reparation and reintegration to the offender's own community rather than banishment.* Such sentences could potentially include community work and appropriate counselling and monitoring.

However, such a shift needs to be very carefully managed, and we believe it should take place over a 4-5 year period:

- ¹ If banishment is simply abolished, there is a serious risk that the large number of people currently sentenced to banishment will end up being sentenced to imprisonment at Maafushi. This will exacerbate Maafushi's problems (see below) and will prevent effective reform of the prison.

¹ People expressed mixed views to us about the appropriateness of ‘Western’ models of community-based sentences with their focus on community work. In part, this is because people tend to know each other in the Maldives, and it would be shameful and demeaning to be required to do community work in sight of the general population.

¹ It is not clear that the infrastructure yet exists on many of the islands to support such systems of punishment.

For these reasons, we recommend a carefully staged approach to moving away from banishment and towards a system of community based sentences, involving trials on selected islands and a process of public education to accept the system.

Recommendation 7: That, in the short term, provision be made for:

¹ **Drug offenders to be sent directly to the DRC instead of prison (see recommendation 2); and**

¹ **A trial, at appropriate selected islands, of an approach based on reintegration and reparation by offenders to their own communities rather than banishment.**

That, in the longer term (having brought the prison into good order and after exploring these alternatives) the government abolish banishment as a sentence.

A LEGISLATIVE FRAMEWORK

There is, at present, no legislation governing the operation of prisons in the Maldives. In our view, it is essential to have an Act that deals expressly with key issues relating to imprisonment. Unless there is a clear legislative framework, there is every danger that the system will operate in an ad hoc, unstructured manner, generating a sense of unfairness on the part of prisoners. Legislation will also help to ensure more effective management of staff and prisoners and will ensure that changes in management personnel do not result in further inconsistencies.

One of the difficulties that is faced at present is that the prison system is under so much stress, and so chaotic, that it would be premature to attempt to develop legislation that deals with all issues. For this reason, we favour an incremental approach in which legislation dealing with some core issues is enacted as a matter of urgency; and other issues are then addressed once the prison has been pulled back into good order and discipline.

The core issues to be contained in prisons legislation in the immediate term would include the following:

- ¹ **A broad statement of the purposes of imprisonment.** This should state that imprisonment is in itself the punishment (in other words, people are sent to prison as punishment and not for punishment through a degrading regime). It should also state that the prison regime should focus on rehabilitation and reintegration.

- ¹ **Reference to Aspirational Standards.** The legislation could usefully include, by way of a Schedule, a statement of commitment to relevant international standards. The *Draft UN Charter of Fundamental Rights of Prisoners* (which is to be discussed at the Eleventh UN Congress on Crime Prevention and Criminal Justice in Bangkok in 2005) provides a possible model for adoption in this way. By

including this as a schedule, it need not create ‘enforceable rights’ on the part of prisoners but it sets the context in which the system should operate.

- 1 **Basic Principles of a Prisoner Disciplinary System** which outlaws ‘collective punishment’ (see below); sets down some basic procedures for dealing with breaches of discipline; and prescribes the nature and duration of punishments such as solitary confinement (see below).

We will also be recommending that a comprehensive parole system should be introduced and that this must, within the next 2-3 years, have firm statutory authority rather than operating simply as a matter of policy. Although the parole system will be the responsibility of a Board that is independent of the DPRS, it is logical for the provisions pertaining to parole to be contained in the same legislation – not least because parole is, potentially, an integral component of a correctional system that focuses on incentives and community reintegration.

Recommendation 8: That a Prisons and Parole Act be introduced which:

- 1 **States the basic principles of the correctional system;**
- 1 **Addresses basic management issues;**
- 1 **Establishes a new parole system; and**
- 1 **Makes provision for a Home Leave program.**

The legislation should then be progressively amended, as the system improves, to include more detailed reference to issues such as prisoner grievance procedures and the new parole system (see recommendations 39-42).

MAAFUSHI PRISON TODAY

1. The Need for a Master Plan

The prison site is complex and confusing, lacking adequate differentiation between prisoners and security between custodial areas. This point should be emphasized at the outset. The environment is disorderly and unsafe. It is impossible to create and maintain an appropriate management regime for prisoners in an unsafe environment, and the work situation is intolerable for staff. The highest priority for DPRS at Maafushi Prison is to create a safe environment, therefore. Only then will it be possible to address questions such as rehabilitation and the balance between security and human rights.

Since the events of September 2003, six new blocks have been constructed at Maafushi. These are: a new investigation area where police may interview prisoners; an isolation block (A10); a new accommodation block with three wings (A7, A8 and A9); an Activities Block; a new Medical Centre; and some DPRS staff accommodation. At the same time, various demolition or conversion works are in progress or planned. These include: stripping out the former large prisoner accommodation block, which is to be converted into an indoor stadium, and demolishing the isolation cells at the back of the women's accommodation area.

These changes have been made without an overall Master Plan for the development of the site. *A Master Plan should take account not only of building structures but also how they fit into or impact upon management regimes, prisoner movements, static and dynamic security, and the staff resources and deployments necessary to operate the whole system effectively.* A Master Plan is urgently required.

In this regard, it is essential that the Ministry of Planning and National Development should be requested to participate in the development of the infrastructure and capital expenditure aspects of the Master Plan. It became evident that, in the past, some proposals have been put forward in an ad hoc and poorly documented manner. The skills

and experience of the Department responsible for capital expenditure on infrastructure must be brought into the Maafushi planning framework.

Recommendation 9: That a Master Plan be developed for Maafushi Prison in the light of the discussion in this Report. Other relevant Ministries, including Planning and National Development, must be involved in this process. The Master Plan should take account not only of construction needs but also of management regimes, static and dynamic security, prisoner conditions and staff resources.

2. Perimeter Security

Given that Maafushi is intended to be a secure prison, the first priority is to secure the external perimeter. At present it is quite porous; staff claim that prisoners could easily escape if they chose to do so. Moreover, contraband can be introduced into the prison, and the evidence we heard confirmed that this actually has been happening. The Director of DPRS has already suggested that a double wire mesh fence should be built around the whole perimeter and that sensor equipment be placed between the two fences. He has also suggested that a road be constructed outside the fence.

These suggestions seem appropriate. However, they presuppose Control Room links to the sensor system and the availability of a motor vehicle and team to attend at any place where the sensor system suggests there has been a breach of the fence. At present these matter are beyond the capability of DPRS. Nevertheless, it is important to put the whole system in place now and activate the various components as resources permit.

Recommendation 10: That a double wire mesh fence, of appropriate design and strength, be constructed around the perimeter, supported by a sensor system linked to the Control Room, and that a road be constructed around the perimeter fence.

A question arises as to the exact area that should be fenced. At the present time, both the NSS and the Police control facilities within the prison site. In principle, these facilities should be outside the prison perimeter, rather than within it. This would constitute an important symbol of the fact that DPRS is henceforth in charge of prison services and that these other agencies deal with prisoners or intervene in a prison situation only by the invitation of DPRS. It is possible that the fence could be built in such a way as to excise NSS and Police facilities.

Recommendation 11: That, in planning the perimeter fence, DPRS investigate the possibility of excising NSS and fence facilities so that they are outside the perimeter of the prison, rather than enclosed within it.

3. The Unsafe Internal Environment and the Achievement of Security

Completion of a perimeter fence goes hand in hand with re-engineering the disorderly and unsafe internal environment. Illustrations of this include the following:

- (i) In the riot of September 2004, prisoners broke out of the A7, A8 and A9 area and climbed into the observation tower, trashing it;
- (ii) The metal fences around A1 and A2 can easily be scaled, and prisoners in fact do so when it suits them;
- (iii) On at least two recent occasions, prisoners have locked guards into cells, and the only recourse for management has been to negotiate for their release;
- (iv) A prisoner recently forced a guard to hand over his keys so that he could let himself into the Medical Centre in search of controlled drugs;
- (v) Mobile phones can be smuggled into the prison with impunity;
- (vi) Illicit drugs are readily available within the prison; and
- (vii) Prisoners seem to have unsupervised access to tools such as hammers.

Not surprisingly, staff at present lack confidence. If there is a threatening incident, there is no 'recovery team', to use Australian terminology, to deal with violent or recalcitrant prisoners. The prevailing approach to management is to try to control prisoners from outside their accommodation areas – for example, by surveillance from the tower or from barred bunkers built into the side walls of an area. This is understandable in a context where up to 100 prisoners roam unsupervised in a block. In the long run, however, DPRS must strive to develop a culture where staff-prisoner interaction is normal. This in turn depends upon their having the ability to separate prisoners into smaller groups, through the use of cells that accommodate fewer people. None of the main accommodation blocks enables this to be done.

Recommendation 12: That DPRS, as part of its medium term planning, examine whether smaller accommodation units can be created within A1, A2, A7, A8 and A9 or, alternatively, an additional block be constructed on vacant land.

Of course, it is acknowledged that cultural and construction cost factors each have a bearing upon the style of accommodation. However, no prison can successfully be managed in a situation where prisoner separation is unachievable. We note that one version of a site plan shown to us envisaged the construction of a five-wing block for Male' prisoners on the north-west corner of the Maafushi site, which would permit separation of prisoners into small groups. The design itself was somewhat old-fashioned, but the principle was correct. This could be explored in future as a way of dealing with this problem and is in accord with the previous recommendation.

The construction of an additional block would also assist prisoner management by facilitating separation of groups from each other. Modern prison practice recognizes the need to provide separate accommodation for drug offenders, sex offenders, violent offenders, elderly offenders, protection prisoners and the mentally unstable. Although these groups obviously overlap with each other, prisoner classification and placement should endeavour to take account of these matters. In addition, of course, women

offenders must be dealt with separately, and there is a need for discriminating classification and placement also within this minority group of prisoners.

Recommendation 13: That prisoner placement processes take account broad categories of prisoner as outlined in this Report.

In a later section, reference is made to the need for clear rules and regulations as to prisoner conduct and sanctions for defiance or breach. A major sanction is solitary confinement. At the present time, two of the three wings of A10 consist of isolation cells. They are of very poor standard; the overall environment is filthy and oppressive, well short of UN Standard Minimum Rules expectations. The Director of DPRS has proposed to construct additional solitary confinement cells in the maximum-security block, which is the first building on the left as one enters the prison site. It certainly seems desirable to bring these prisoners back into the main part of the prison, in less repressive conditions.

Recommendation 14: That a new solitary confinement block be constructed within the maximum-security area.

Recommendation 15: That the isolation cells in A10 be re-furbished and held in reserve for future use as required.

At present, maximum-security and isolation prisoners remain in their cells 24 hours a day. This is in breach of the UN Standard Minimum Rules. The reason is that the outdoor area of the maximum-security area is not secure. Yet of all the areas in the prison, this would be the simplest to make secure. The high walls on three sides could be supplemented with razor wire, whilst the low roof above the existing cells could also be built up at the points where it intersects with the high walls and also fortified with razor wire throughout its whole length. The entrance gate should be completed; as with all entrances to secure areas of the prison, this should be done with an airlock arrangement (two gates, opened one at a time).

Recommendation 16: That the maximum-security area be made more secure in the ways described.

Once that has been done, maximum-security and isolation prisoners could be let out for exercise in groups of one to four, as appropriate. An added advantage is that this would bring staff into direct management of prisoners – an essential step in building up confidence and managing the prison proactively.

Recommendation 17: That when the security situation has been satisfactorily addressed, prisoners in the maximum-security area be permitted to exercise in the open air.

The other area in A10 is the protection wing. Prisoners are for the most part sent there at their own request because of difficulties with other prisoners. In a well-run prison, it is the predators who are segregated rather than their victims. Unfortunately, at the present time, there is not sufficient control of the Maafushi prisoner population to enable predators to be identified and segregated.

The A10 protection area fails to meet the most elementary levels of decency. Because prisoners are permitted to manage themselves, the lowest common denominator prevails. Destruction of DPRS property apparently occurs as a matter of course.

Recommendation 18: That the A10 protection area be temporarily closed, cleaned up and re-furnished, stocked with some recreational materials, and then actively managed.

There are security issues in A7, A8 and A9 that are already well understood by DPRS management. These include: that electricity power junctions and high power water hoses are accessible by prisoners, that the bunkers are in effect ladders to assist prisoners in scaling the walls, and that the barbed wire on the walls is conveniently V-shaped so that a mattress can be bent lengthwise and fitted into the V so as to provide either a resting

place or an escape route. Also, access to the roof is simple, and in one of the wings a ladder has been positioned to assist those who are less agile to climb up. These matters are indicative of a situation where the prisoners, not the staff, are in charge.

Recommendation 19: That the detailed security issues identified above be addressed as a matter of urgency.

Similarly, the tin walls surrounding A1 and A2 possess almost no security value.

Recommendation 20: That a secure wire-mesh fence be placed around and between Blocks A1 and A2 and that the tin fences be taken down except in the area where one block would be visible from the other block.

4. Under-Investigation Prisoners

The general point should be made that DPRS considers that under-investigation prisoners are more difficult to manage than sentenced prisoners. Numerically, they dominate the prison – at least 60% of the population at any given time. The implications of this were referred to in the discussion of Dhoonidhoo Detention Centre, above. In summary, responsibility for all such prisoners should rest with DPRS. It was evident from our discussions that DPRS does not feel fully in charge of even those under-investigation prisoners who are currently held at Maafushi. Those prisoners are at present accommodated in Blocks D6, A8 and A9. As already mentioned, one of the problems in relation to A8 and A9 is that the cells are too large to permit adequate separation and control, and this is also true in relation to D6. This probably goes back to the fact that both police and DPRS are part of the Ministry of Home Affairs.

The times for which some of these prisoners are held can be quite unconscionable. It is incumbent upon both the Police Service, the Ministry of Justice and the Prosecutions Branch of the Attorney General's office to expedite their operations. Current delays and

shortfalls wash back into the ability of DPRS to run a safe and orderly prison at Maafushi.

Recommendation 21: That intra-governmental discussions be held to improve the speed and timeliness of investigations and criminal trials.

5. Drug Rehabilitation Programs

As discussed above, the impact of the Maldives Narcotics Law upon the prison population has been profound. It has been suggested that DPRS should facilitate the delivery of a drug rehabilitation program at Maafushi, and the new Activities area has already made provision for this.

Recommendation 22: That a drug rehabilitation program should be introduced for suitable Maafushi prisoners, to be delivered by the NCB (see also Recommendations 2 and 35).

6. Accommodation for Women Prisoners

The need for better programs and conditions for women will be discussed generally later. With regard to the accommodation area, it is not of an acceptable standard. The area should be opened up to the proposed new perimeter fence line on two sides, to the Police investigation area on the west and to the NSS area on the north. Within this enlarged space, additional accommodation should be built so as to reduce present crowding, and additional recreational and work facilities should be provided. The accommodation should be in small bungalows, each housing 4-6 women.

Recommendation 23: That the women's accommodation area be expanded and improved in the ways described in this Report (see also Recommendation 34).

At present, the area is unsuitable for infants or small children. Yet the family situation of some women prisoners is such that they sometimes have no alternative but to bring them to prison with them. At least one bungalow should provide mother and child facilities.

Recommendation 24: That in planning the expansion and improvement of the women's accommodation area, account be taken of the fact that infants and young children will sometimes accompany their mothers (see also Recommendation 34).

The provisional site plan, referred to previously, allocates space on the vacant land in the north-west of the site for a three-pronged women's wing. This is the wrong sort of accommodation, in the wrong place, and should not be proceeded with.

7. Remaining Security Issues

Four matters related to security remain to be discussed. First, the communications system on the Maafushi site is inadequate. Modern prisons require modern communications - from control room technology to person-to-person interaction.

Recommendation 25: That expert technical advice be obtained as to the creation of an integrated communications system for the Maafushi site.

The second related to the management of emergency situations. Modern best practice requires that a prison superintendent be the arbiter of security needs in the event of an emergency. Appropriate handling of such situations requires understanding of the dynamics of inmate culture. We were informed that on 20 September 2004 the NSS took over control of the situation according to their own criteria and decision as to timing. Possibly, DPRS staff were not ready for the responsibility. However, as DPRS becomes more professional, it must have decision-making responsibility with regard to external assistance.

Recommendation 26: That DPRS negotiate a memorandum of understanding with the NSS and the Police as to the circumstances in which external assistance will be sought and the command structure applicable to such circumstances.

The third matter related to prisoner movements from Maafushi to Male'. Movements for court hearings are unavoidable at present, but we were pleased to hear that the existing court facilities on Maafushi, which are somewhat limited, are to be expanded. As long as this does not impact upon free communication with lawyers or undermine due process, this would, from the point of view of secure management, be a good thing. The other main reason for movements is medical appointments. Such transfers provide an opportunity for drugs to be obtained by prisoners and escapes to occur. Since the construction of the new Medical Centre and the recruitment of medical staff, the number of such movements has diminished and thus the threat to good order and security. DPRS appears to be handling this matter in a balanced and sensible way, and we make no further recommendation on this matter.

The fourth matter relates to the equipment in the gymnasium. It consists of body-building equipment, for the most part weights and lifting mechanisms. Most modern prison systems have now abandoned this kind of equipment. What is required for prisoners' health is aerobic equipment – exercise bikes, walking machines, rowing machines and so on. Body building equipment poses a security risk.

Recommendation 27: That the body-building equipment in the gym be replaced forthwith by aerobic equipment.

8. Staff Recruitment and Training

This finally brings one to the issue of staff recruitment and training. It is evident that there has not been time or resources to train the existing staff. Prison officer training needs are quite different from those of NSS or Police personnel, even though there are some common or overlapping strands.

DPRS urgently requires 12 to 20 staff trained in prison management. Probably the only fast-track alternative is to seek regional assistance from a mature corrections regime – Malaysia, Brunei, Thailand or even Australia. Such trained staff could then become Block managers and also lead the on-the-job training of existing and newly-recruited staff.

Recommendation 28: That DPRS, with the assistance of the Government of the Maldives, explore directly and through relevant regional organizations such as APCCA and UNDP the possibility of sending staff to a regional Prisons Department for training in prison management.

A problem with recruitment may well be that comparable jobs, in particular as police, carry higher status and pay. The higher status arises from the fact that the special place of prison officers in contributing to national development and security is not yet appreciated, as a separate workforce is such a recent development. It must be understood, however, that successful recruitment must take account of the fact that the recruitment pool will overlap with that of the Police recruitment pool.

Recommendation 29: That the Police Service should be seen as the natural comparator for the DPRS in terms of pay and conditions.

9. Management Needs

Finally, senior management is extremely thin on the ground. We were concerned at the level of dependency upon a handful of people, in particular the Director. A service cannot be built successfully on such shallow foundations.

Recommendation 30: That the Government of the Maldives re-assess the management resources available to DPRS with a view to bringing in more expertise and providing opportunities for developmental training for senior personnel.

10. Conclusion

This long section on the current situation at Maafushi has focused very much upon security issues. This is because it is, quite literally, impossible to make meaningful progress in relation to the services, programs and conditions for prisoners unless the prison environment is orderly and safe.

MEDICAL FACILITIES AND SERVICES

As mentioned, a new Medical Centre has been constructed following the September 2003 Incident. Staffing arrangements have also been radically upgraded. The demand for medical services is high, with about 45 to 50 consultations taking place on an average day. Record-keeping seems to be adequate.

Medical staff seem to be under some intimidatory pressure to authorize prisoners to travel to Male' for hospital consultations. Prisoners see this as an opportunity to meet family members and possibly to obtain drugs. There have been incidents where medical personnel have felt very unsafe, and it is for this reason that prisoners are now escorted to and from the Medical Centre by Police personnel. When DPRS staff have regained their confidence and have been properly trained, this function should be taken over by them.

Ideally, all prisoners upon admission should be medically screened not only for the normal health indicators such as diabetes, TB or cardiac problems but also for HIV and Hepatitis B and C – classic drug-associated illnesses relevant to this population. To this point this has not been possible because of insufficient resources. The UNDP Report (2003) has noted:

“Given the patterns of sexual behaviour among substance users, HIV/AIDS can very easily spread in this vulnerable population. Drug programmes need to address HIV/AIDS awareness issues... Drug abuse and the associated high risk behaviours, especially sexual behaviours, make people more vulnerable not just to HIV/AIDS but also to hepatitis B and C. these problems must not be overlooked, and surveillance methods and interventions need to be developed”.

(Pages 63-64)

Admission to prison is potentially a cost-effective point at which to introduce surveillance.

Recommendation 31: That when resources permit, full medical screenings be carried out on all prisoners upon admission to Maafushi.

The other main health issue relates to the women prisoners. Women's health needs are different from those of men, yet prison medical services usually are constructed around a male typology. At Maafushi, gynaecological services are very difficult to access. Ideally, a female gynaecologist or a qualified women's health nurse should hold a clinic regularly.

Recommendation 32: That DPRS give attention to improving the availability of gynaecological and other specialized women's health services at Maafushi (see also Recommendation 34).

Although at the time of our visits no children were with their mothers in the prison, this has occurred in the past and may again in the future – the present accommodation is not suitable. Consideration needs to be given to how the Medical Centre could if necessary, provide pediatric services.

On balance, the Medical Centre arrangements go a fair way towards meeting the standards set out in the UN Minimum Standard Rules. This is to the credit of DPRS; there has been a quantum leap since September 2003. Improvements could be made with regard to routine health screening, women's services and also mental health services.

WORK

A prisoner population that is idle is more difficult to manage than one that is busy. At Maafushi there are 400 prisoners but only 85 jobs. A complication is the fact that about 230 prisoners are under investigation or awaiting trial. Rule 89 of the UN Standard Minimum Rules provides that:

“An untried prisoner shall always be offered the opportunity to work but shall not be required to work. If he chooses to work, he shall be paid for it.”

Unfortunately, these prisoners are not even offered the opportunity to work. Consequently, they spend their time sleeping, hanging around, just doing nothing. Not surprisingly, most of the disorder in the prison arises amongst these prisoners; their frustration at the investigation process and the trial delays is exacerbated by their boredom and resentment of the prison regime.

It is not easy to suggest what work might be offered to the prisoners at Maafushi, both sentenced and unsentenced. The prison site as a whole needs a thorough clean-up, and when the perimeter fence has been built work parties could do this securely. However, the incentive of payment (30 Rufiyaa a day) may not be sufficient. Possibly, a hierarchical system of allocating accommodation might provide an additional incentive.

Other than that, we wonder whether the soil might be enriched and hydroponic horticulture attempted. In addition, more workshop-based activities - metal work, carpentry, shoe-making, upholstery work, sewing and so on could be considered. These activities would require capital investment, of course, which is a matter of governmental priorities.

Another approach would be to introduce education and life skills programs which, for purpose of daily payments, should be regarded as work.

Finally, there seems to be some scope for prisoners at Maafushi to be involved in food preparation and related catering activities, all of which appear to be outsourced at the present time.

Recommendation 33: That DRPS explore what types of work or other relevant programs could be made available on-site, taking note of the need for under-investigation and pending trial prisoners to have incentives to participate.

WOMEN PRISONERS

1. The Population

On the days of our visits to Maafushi, there were around 20 female prisoners. The issues of drug offending and unsentenced prisoners were even more acute here than with the men. Only one of the women was not in prison for drug related matters. She told us she had been sentenced to a term of two years and two months for allowing a group of people to view a pornographic movie in her room. She said that none of them had confessed and that they had therefore not been taken to court. As it was her room, she had confessed. Around 15 of the women (75%) were under investigation or awaiting trial and only five were sentenced prisoners. These figures indicate that women are particularly affected by the current approach to investigations and the narcotics laws.

2. The Conditions

Mention has already been made of the current conditions in the women's section. They are held in a small unit, located in a small compound surrounded by a corrugated fence topped by barbed wire. The unit itself is crowded and hot, with few activities other than a sewing machine and a TV. The exercise area at the front of the unit is not shaded and is effectively out of action for much of the day. All of the women complained about the size of the enclosure. Recommendations have already been made with respect to improving this area by an expansion of the size of the compound and the construction of additional accommodation (see above).

3. The Issues

A range of concerns arose, many of which are common to women prisoners in other systems, but had specific local resonance. They included the following:

- ¹ **Drug treatment:** Despite the overwhelming preponderance of drug offenders, there are no treatment programs in the prison. We have already recommended a new approach to drug offenders, including the introduction of rehabilitation programs in the prison. As suggested by Alder and Polk (2004(a)), programs appropriate to the needs of women in the Maldives should also be introduced
- ¹ **‘Contamination’:** There was concern that women who do not use drugs prior to admission may become motivated to try drugs on release after listening to the experiences of other women. It was suggested by some prisoners that there should be a separation. However, this seems quite impracticable given that only one woman was not there for drug offences.
- ¹ **Family isolation and concerns:** The women, even more than the men, felt a great sense of isolation from family, and especially from children. A surprising number of the women (6/20) had husbands in Maafushi at the same time but had no contact with them. We are recommending that a system of home leaves should be introduced (see below). Subject to reasonable security considerations, the DPRS should also explore the possibility of contact between husbands and wives who are incarcerated at the prison at the same time.
- ¹ **Children:** There were no children in prison with their mothers at the time we visited. We were told that babies had been in the unit from time to time in the past. The issue of whether children should stay with their mothers in prison, at least when they are very young, is a complex one, which involves balancing a range of considerations. In principle, there are good arguments for young children staying with their mothers, *provided that the physical conditions of the prison are suitable*. They are clearly not suitable in Maafushi at present. However, this is an issue upon which we have already made recommendations (suggesting at least one accommodation hut should have mother and child facilities). It is also an issue on which the DPRS and the Ministry for Gender, Family Development and Social Security might usefully hold discussions during the redevelopment of the prison.

¹ **Hygiene and health:** Some women said that conditions in the unit had not always been hygienic; but that there had been some recent improvements in that regard. Most of the women viewed health services as inadequate, especially in the area of gynaecological services. We were told that, on occasions, women with gynaecological problems face lengthy and bumpy boat rides to Male to get treatment. The new on-site medical facilities should go some way to improving services but it would be appropriate also to consider the feasibility of a gynaecologist visiting the prison on a reasonably regular basis.

¹ **Work and other activities:** The women appeared to have even fewer opportunities for work or constructive activities than the men. Two women (10%) were apparently employed as cleaners but there was no other work. Apart from the sewing machine, there were no signs of artwork and the women said they had no access to books of education. Some said they would also like to have religious talks. As with the men, there is a clear need for the prison regime to become more incentive-based and for more meaningful and constructive work and activities.

Recommendation 34: That a master plan be developed for women's imprisonment. This plan might usefully include input from the Ministry for Gender, Family Development and Social Security, given that agency's responsibility for both women's and family issues. The plan should include consideration of the following matters:

¹ **Accommodation, including mother and child facilities (see also Recommendation 24).**

¹ **Drug treatment programs that pay regard to the specific issues facing women.**

¹ **Work and constructive activities.**

¹ **Family and child contact issues.**

¹ **The provision of basic gynaecological services at Maafushi itself and more complex matters in Male.**

REHABILITATION PROGRAMS AT MAAFUSHI

1. Drugs

In terms of criminal activity, the overwhelming problem is that of drug abuse; indeed, the Police Commissioner nominated no other area of special concern when we asked. We have already canvassed the drug issue in broad terms and have made a series of recommendations with respect to the narcotics laws, including the expanded use of the Drug Rehabilitation Centre instead of imprisonment. However, there will always be some offenders with drug problems who will be incarcerated at Maafushi, including those convicted of violent offences.

We have already recommended that drug treatment programs be introduced into the prison but it is important to outline some more specific issues:

- ¹ First and foremost, the current security situation at Maafushi is such that it is almost impossible to see how treatment programs could be successful; drugs, along with mobile phones and other contraband, appear to be readily available, at least in the men's sections.
- ¹ Ideally, all prisons would be fully 'drug-free'. However, even well-managed and secure prisons face problems of access to drugs. For this reason, there is much to be said for the establishment of a Drug Free Unit within the prison, in which offenders are given privileges over and above the normal prison regime; but where they are regularly tested for drug use as well as being given counselling.
- ¹ The Therapeutic Community (TC) approach offers one option with respect to the regime that might operate in a Drug Free Unit. However, the nature of the regime we observed at the DRC poses a potential problem in that it is based on a hierarchical regime in which some clients appear to hold a position of some formal

authority over others. Care would need to be taken to ensure that this approach is compatible with Rule 28 of the United Nations Standard Minimum Rules.

Recommendation 35: That there should be a strong and developing focus on drug rehabilitation programs in Maafushi prison, including:

- ¹ The introduction, when feasible, of a Drug Free Unit;**
- ¹ Evaluation of the appropriateness of the Therapeutic Community model and other possible approaches; and**
- ¹ Consideration of the specific needs of female drug offenders.**

2. Other Offences

Most ‘Western’ prison systems offer programs to address violent and sexual offending, both within and outside families. It was difficult to form a clear impression of the extent to which such programs are required in the Maldives, or of the form that they might take. However, UNICEF stated that a draft report has revealed significant (but still largely hidden) issues of child sexual abuse, and the Ministry for Gender, Family Development and Social Security told of issues of domestic violence (again largely hidden)

It must be borne in mind that treatment programs must be culturally and religiously appropriate; and it may well be inappropriate and ineffective to introduce models / programs that have been designed against a different set of issues and in a different context. In Australia, for example, there is evidence that some of the content of generic ‘cognitive skills’ courses may not reflect the realities of life for Aboriginal inmates; and that issues of family violence in Aboriginal communities cannot be addressed through mainstream ‘Western’ programs (Office of the Inspector of Custodial Services, 2004; Blagg and Morgan, 2004)

Under these circumstances, we cannot make concrete recommendations about the nature of treatment programs in the Maldives. However, it is clearly an area in which further local work, involving the skills of different agencies, should be conducted.

Recommendation 36: That the DPRS, the Ministry for Gender, Family Development and Social Security and the Police Child Abuse Unit, along with other relevant agencies, conduct further research into:

- ¹ The extent of violence and sexual abuse; and**
- ¹ The development and implementation of culturally appropriate treatment models.**

INSPECTIONS AND COMPLAINTS

1. Inspections

All closed institutions potentially suffer unless there are strong and well-established accountability mechanisms. Within the Maldives, Dhoonidhoo probably provides the most obvious example of this. As we have seen, it is only 5 minutes from Male', and it houses people who are under investigation (and who are deemed to be innocent until proved guilty); and yet there were some significant accountability gaps.

Regular inspection by an autonomous body provides the optimum form of accountability. Ad hoc inspections, such as those by Amnesty International and the International Committee of the Red Cross do have value. However, they are usually driven by negative events. On occasions, this creates sensitivities amongst people in the country in question, and the agencies may be seen as 'outsiders' with insufficient insight into local issues and concerns. Furthermore, the inputs of Amnesty and the ICRC tend to be one-off, and to lack follow-up mechanisms.

There will always be a role for international organisations of this sort but an independent, national standing body, with an ongoing remit, is preferable. At present, in the Maldives, there appear to be two such bodies, both formed in the aftermath of September 2003: the President's Jail Oversight Committee and the Human Rights Commission.

2. The Jail Oversight Committee

The Jail Oversight Committee is appointed by the President and is independent of the Home Affairs Ministry and the police. The Committee reports to the President and the Ministry of Home Affairs about Maafushi Prison every quarter and has the power to inspect the prison without prior notice to the DPRS. The Committee told us that it has reported three times so far. Its reports are not available in English but we were briefed as to their contents. The reports appear to have been sensible and appropriate. They seem

already to have assisted in the process of improvement with respect to the physical infrastructure of the prison and health services. To date, the Committee's main reference point has been the UN Standard Minimum Rules and their objective has been compliance rather than innovation in developing standards.

The Committee has also made observations about issues that should be reflected by the DPRS in its management of the prison. These include issues of the classification and segregation of different groups of prisoners, and concern at extensive drug use in Maafushi (a point also made by the UNDP, 2003), and the likelihood that some guards are being bribed by prisoners.

The Committee has more recently been given jurisdiction over Dhoonidhoo but, to date, it has reported only on Maafushi. It has no jurisdiction over the Drug Rehabilitation Centre (DRC) but its jurisdiction could be so extended if, as we have suggested (see above), more offenders are sentenced to the DRC or if there is a system whereby prisoners are transferred from Maafushi to the DRC for part of their sentence.

On balance, the Jail Oversight Committee has made a good start on what is, for the Maldives, a radical new approach to accountability; and is to be commended for its work.

3. The Human Rights Commission

The Human Rights Commission is of no less a status, its origins lying in the September 2003 Incident. The Commission was established without legislation and, at present, the Commission is essentially a voluntary organisation. However, a Bill has gone to the Majlis to provide a firmer legislative basis for its operations. In a Statement of 9 June 2004, the President announced his intention to propose a constitutional amendment as follows:

“4.2. To stipulate that there should be a National Human Rights Commission, to provide for the manner in which members of the Commission are to be appointed, and to enumerate the powers of the Commission.”

The fact that the Human Rights Commission was established in the aftermath of September 2003, even before Constitutional amendments were proposed, was an important step, and the Commission is to be commended for its recent activity in relation to prison and detention centre matters. As noted earlier, it has visited Dhoonidhoo on three occasions since August 12-13 and has made a series of recommendations based on observations similar to our own. However, the status of Human Rights Commission recommendations in general, and of the Dhoonidhoo recommendations in particular was not clear to us.

We were informed that the Oversight Committee and the Human Rights Commission have not, to this point, held discussions about their respective roles with regard to the inspection of Maafushi and Dhoonidhoo. It may be useful for further discussions to be held to clarify the roles of the two organizations in creating a more coordinated and effective inspection and accountability regime. However, the Human Rights Commission’s independent status is important and, in the light of their activities post August 12-13, should be maintained.

Recommendation 37: The President’s Jail Oversight Committee and the Human Rights Commission jointly develop a comprehensive program for the regular inspection of Maafushi Prison, Dhoonidhoo Detention Centre and other related institutions and facilities (such as court holding cells and the Drug Rehabilitation Centre).

4. Individual Prisoner Complaints

The Oversight Committee and the Human Rights Commission are both concerned primarily with systemic issues. It is also important to consider how individual prisoners’

complaints are to be dealt with as a matter of routine prison management. This is a very difficult and complex issue given the current circumstances at Maafushi and Dhoonidhoo. Our interviews with inmates at both places indicated that there are serious unmet needs.

At Maafushi, a large number of grievances appear to arise out of broader defects in the legal system, and involve matters over which prison authorities have no control: ‘Why am I still here under investigation?’ ‘How do I have to behave to get a Presidential pardon?’ ‘Why is there no parole system?’ and so on. Others relate directly to the running of the prison; for example, ‘The guards are OK but they can’t give an answer to anything;’ ‘Why are drug offenders mixed with other offenders?’; ‘Why do we all get punished when one person does wrong?’ and so on.

There are, in fact, so many complaints that any new complaints mechanism would probably be overwhelmed and doomed to fail in the short term. This would, in turn, distract from making the changes that are a precondition for reducing the level of grievances. It may therefore be best to await the implementation of the changes we are suggesting with respect to the prison regime before deciding what sort of complaints system is appropriate and viable. In the meantime, the Human Rights Commission and the Oversight Committee might consider whether some kind of temporary system can be channelled through their officers.

Recommendation 38: That, as a matter of urgency, the Jail Oversight Committee and the Human Rights Commission examine avenues to consider significant individual complaints, pending the longer term development of a more comprehensive framework for handling prisoner grievances.

PRISONER DISCIPLINE: INCENTIVES, PRIVILEGES, AND PUNISHMENT

1. Discipline and Control at Maafushi

At present, there are no clear regulations governing what is expected of prisoners. We were told that, at least in the male sections of the jail, defiance of orders is commonplace. It was all too evident that order in Maafushi Prison is very much dependent on how prisoners themselves perceive problems and issues. Some people said that, in many respects, the prisoners are running the prison. Certainly, our overall impression was that it is not an orderly environment and that it is potentially unsafe.

This is due to a variety of reasons, many of which have already been discussed. They include: poor design of the prison, making separation of different classifications of prisoners virtually impossible; the almost total absence of work or other structured activity for prisoners (and consequential boredom); and the fact that DPRS staff are inexperienced in the dynamics of prison security. Recommendations have already been made with respect to these matters.

2. Collective Punishment

One aspect of the lack of order is the absence of clear expectations about conduct in prison or rules about how individuals who are disobedient or disruptive are to be dealt with. Throughout Maafushi, prisoners complained that this was resulting in collective punishments being imposed. For example, if a few people in a unit play up, all will lose out.

This is in breach of the United Nations Standard Minimum Rules (Rule 30). It is also indicative of weak management systems. It is therefore essential that a simple code of conduct be introduced.

Recommendation 39: That the new Prisons and Parole Act should state that collective punishment should only be imposed for collective wrongdoing.

3. Privileges and a Code of Conduct

A code of conduct should define, with reasonable certainty, what the authorities are entitled to require of prisoners. It should also state that disobedience to such lawful orders constitutes a prison offence. Prison offences should be dealt with through a hierarchy of penalties, ranging from short term loss of privileges through to a period of solitary confinement.

However, such a scheme assumes that there is some clarity as to what privileges a prisoner possesses. For example, in a prison system where phone calls to family members or family visits are permitted; or where individual items of electronic equipment such as radios can be owned or used; or where there is a range of jobs carrying levels of remuneration, it is relatively simple to calibrate loss of privileges with the nature and severity of the prison offence. At Maafushi, these features do not exist at present. As a result, few ‘penalties’ other than solitary confinement exist, and graduated loss of privileges is simply unfeasible. The whole Maafushi regime therefore needs to be reviewed, with a view to bringing some reality and balance to the notion of discipline.

In terms of the process that might apply, a well run system would allow the unit manager to impose loss of privilege penalties, but would also require those penalties to be properly recorded and reported to the Superintendent.

4. Separate Confinement as a Punishment

Some prison offences (such as serious assaults) will be so serious that they must be referred to an outside court; and some will be so serious that separate confinement is the

only appropriate penalty. Since separate confinement would be the toughest ‘internal’ sanction, it should be imposed by the Superintendent and not by the unit manager. The prisoner should also be allowed a hearing, to put his side of the case, before such a punishment is imposed. The sorts of offences that might attract separate confinement would include: violence to other prisoners or staff that does not merit referral to an outside court, drug use, possession of contraband, attempted escapes, repeated refusal to obey lawful instructions, and other matters that challenge the fundamental good order and safety of the prison regime.

Recommendation 40: That DPRS should develop a code of conduct relating to prisoners’ behaviour and that:

- ¹ Graduated responses to breaches of the Code should be built into the prison management system;**
- ¹ Loss of privileges penalties may be administered by unit managers but must be properly recorded and reported to the superintendent; and**
- ¹ Solitary confinement should be ordered only by the Superintendent after the prisoner has been given an opportunity to put his case.**

The UN Standard Minimum Rules (Rules 27-32) provide an excellent general statement of the broad standards that should be met in any disciplinary code. Within this framework, the DPRS will need to identify the specific substantive issues that need to be included in the Maafushi code of conduct, reflecting the regime that is created.

Some prisoner disciplinary systems include elaborate procedural rules and processes for appeals. These are matters to which attention may be given in the longer term. At this stage, however, it would be unduly complex to involve judicial authorities or to create appeal mechanisms. Under the system we have described, the Jail Oversight Committee and the Human Rights Commission should be able to monitor and assess the fairness of the system in their inspections and discussions; and should be able to make appropriate recommendations for improvement.

PAROLE AND HOME LEAVE

1. The Nature of Parole

In most jurisdictions, parole is a scheme whereby prisoners serve some of the term of imprisonment that has been imposed by the court under supervision in the community. In other words, parole operates as a conditional ‘early release’ scheme. This is the situation in Australia, Canada, New Zealand and the UK. As we understand it, this is also the basis of the scheme that Malaysia is developing.

Professor Robinson (2004, paras 6.5 and 6.6) has some concerns with such an approach but does see value in the supervision of offenders following their release:

“6.6 Every sentence to prison include term of parole on release – While the Parole Board’s early release power should be eliminated, it is essential to maintain the Board or some similar body to administer a system of supervision of those recently released. To make such supervision possible, every sentence of imprisonment should as a matter of law include a term of parole, during which such supervision is authorized and restrictions on liberty can be imposed for violations of release rules.”

It appears that Professor Robinson prefers a system in which there is no discretionary decision making with respect to the person being released early from prison; but where offenders would serve the full term imposed by the court (under his proposed new sentencing guidelines) and then, upon release, would be subject to mandatory parole supervision.

2. A Parole System in the Maldives?

The Maldives has already made significant, though rather tentative, steps towards a parole system. A Parole Board was established by the President in 2002 and there have

been two main phases of parole release. In September 2002, 19 prisoners were transferred from prison to house arrest. Given the size of the prison population at the time, these are very low numbers. We were advised that this is because out of the 700 sentenced prisoners, only 23 satisfied the qualifying criteria – namely, that they were serving three years or less and were not violent offenders, sex offenders, drug traffickers or repeat drug offenders. Of the 19 who were released, 14 successfully completed the period on parole.

In our view, there are overwhelming reasons for introducing a more comprehensive parole system, and one which is founded on legislation rather than policy. We believe that this should be based on an early release model, administered by a Parole Board:

- ¹ International evidence is that good parole systems help in offenders' reintegration and can help reduce recidivism, by allowing a period when the person can be supervised and monitored. This is further evidenced by the success of 14 of the 19 people released by the Parole Board in 2002 (over 73% success rate)
- ¹ At present, most offenders are serving long sentences with no apparent ability to work towards early release. The Office of the Attorney General (2004) and others have noted that this has created a sense of hopelessness – something that was constantly reiterated by prisoners. In our view, a new system of parole should apply to these existing prisoners as well as those who may, in future, be sentenced under a different regime.
- ¹ Where early release has occurred (as in the President's release of 800 prisoners after the September 2003 incident) it has been ad hoc and many prisoners complained that it had been unfair, in the sense that it was not clear why some people had been released and others had not. A properly regulated parole system offers an incentive towards which prisoners can aim and work.

¹ An incentive-based approach is integral to effective prison management (see above). Although some incentives can probably be introduced within the prison itself over the short to medium term, it will take some time before this reaches full operation. Provided it is done well, and is seen to be fair, an early release parole system can offer an immediate and major incentive that can assist in rebuilding control and safety in the prison.

¹ Since the vast majority of prisoners face serious drug problems, it is important to provide reintegration services and monitoring (e.g., through urinalysis testing for drug use) on release.

We were told by prisoners and other people that the parole system may face some hurdles in terms of public acceptance. In part, this is because so many people are known to one another and because the drug laws have created an environment in which users are seen as serious criminals. It may therefore be important to consider ways in which public confidence can be fostered. In essence, the messages that Parole Boards give in other jurisdictions are that:

¹ The person is still under sentence;

¹ Parole is, ultimately about reducing crime and improving public protection; and

¹ The general community has a responsibility towards prisoners and ex-prisoners because almost all of them will eventually be released even if they are not given parole.

Canada's National Parole Board has some useful material on its website with regard to the issue of public support.

As a result of the September 2003 incident, the Maldives seems to have a unique opportunity to introduce a scheme at the present time; the population has clearly been sensitized to the issue of prison conditions and most of the prisoners who were subsequently released 'en bloc' by the President appear to have been unequipped for release.

Recommendation 41: That a legislative scheme for a parole system should be introduced within the medium term. The system should be based on an early release model and should apply retrospectively to prisoners who are currently incarcerated as well as those who are sentenced in the future. Responsibility for the system should lie with a Parole Board that is independent of the DPRS and that has relevant representation from stakeholders such as the judiciary and human rights agencies.

3. The Outline of a Parole Scheme

The Parole Board advised us that it had drawn up a proposed new parole program in March 2004 and gave us details of the proposed structure:

- ¹ **Criteria:** the person has served one third of the sentence, has shown good discipline in prison, and is not serving a sentence for an offence against national security.
- ¹ **The Parole Period** would be 12 months, with Parole Board reviews of progress every three months. The conditions of release would be gradually relaxed throughout the 12 month period; for example, the first three months would include a curfew that could be lifted in the later stages; and there would be more rigorous counselling and monitoring over the first nine months.

We believe that this model is basically very sound and should be systematically trialed in the lead up to any legislation with respect to parole. The trial period will allow the Board to make informed assessments about a range of issues. These include the general success of the scheme (in terms of prison management and re-offending); the best administrative arrangements; whether the parole period should be fixed at 12 months (as proposed) or should vary by reference to the length of sentence; and whether it is necessary for the Board to review at such frequent intervals.

Recommendation 42: Prior to the enactment of enabling legislation, the existing Parole Board, under the aegis of the President, should administer a parole system along the lines it has already proposed. The eligibility criteria should be extended beyond the 2002 model and the Board should issue written guidelines and information about the operation of the scheme. Secretariat resources must be provided to allow this to happen and to allow a general evaluation of the scheme in advance of legislation.

4. Home Leave

We were informed that an ad hoc system of ‘home leave’ operated for a period of time after the September 2003 incident until around May 2004. It appears that the scheme has not operated subsequently, primarily because of security concerns. However, there appear to be strong reasons for developing a systematic home leave program:

- ¹ **Reducing dislocation:** It is not always easy for families to visit Maafushi, especially from the more distant islands. It can be both costly and time consuming, especially if they have family commitments. This is a cause of considerable angst to the inmates.
- ¹ **An incentive/privilege based prison regime:** A consistent theme throughout this report is to encourage an incentive or privilege based prison regime. Allowing prisoners to work towards the privilege of home leaves can assist in prison management.
- ¹ **Reintegration:** We have recommended a parole system. However, especially in a regime where people are still serving long sentences, it makes very good sense to permit some level of home leaves prior to parole. This helps both prisoners and families to adjust to the prospect of parole release. The home leave scheme could

be graduated, in the sense that the leave periods become longer if the person performs well, and the closer he or she gets to parole.

Security is, of course, a concern. The comments made to us suggest that main problem under the previous scheme was not whether prisoners would return, but the issue of drug use or contraband. However, once the prison's security arrangements are improved, it should be possible to screen prisoners on their return and to test for drug use. If home leaves form part of a regulated, incentive-based scheme (rather than being ad hoc acts of grace), prisoners will also know that they stand to lose significantly if they misbehave; they will jeopardize not only their chances of further home leaves, but also their prospects of parole.

Recommendation 43: That a comprehensive and systematic scheme of home leave be developed as part of an incentive-based prison regime and as a 'testing ground' for prisoners prior to parole.

MULTIPLE OFFENCES

1. The Nature of the Problem

The Maldives is not alone in facing some complex intellectual and practical problems in the context of ‘multiple offenders’; in other words, those who face several charges at the same time, or who are already under sentence when they are sentenced for another offence. It was difficult to get a clear picture of the extent to which the Maafushi inmates are multiple offenders. The prisoners themselves tended to talk of being in prison solely for drug possession, or having been deemed to be traffickers under the 1 gram rule. However, when asked, some of them did admit to having ‘done bad things’ to feed their addiction.

In practice, it would appear that a good deal hinges on police discretion. We were told, for example, that in cases of multiple offences, it is not uncommon for people to be charged only with selected matters. Rightly or wrongly, our sense was that, given the long sentences that apply to simple drug possession, it is probably not always considered necessary to devote extensive resources to pursuing all potential matters.

However, for those people who are convicted of multiple offences, the consequences are draconian. The current practice is that consecutive (sometimes called ‘cumulative’) sentences are to be imposed for each offence. Professor Robinson (2004, para 6.8) has drawn attention to some of the difficulties to which this gives rise, stating that:

“The current practice ... fails to account for our shared human intuitions of justice that, when sentencing for multiple offences, the punishment for two related offences – stealing loaves of bread from two adjacent shops – does not call for twice the punishment of a single such offence.”

2. Addressing the Problem

Professor Robinson (2004) has outlined one possible approach to addressing the problem, in the form of a highly structured model in which second and subsequent offences carry increasingly less punishment, according to a percentage-based formula. He does not favour any measure of concurrent sentences because this ‘tends to trivialise’ the second or subsequent offence.

In our view, there does need to be a far more flexible approach to multiple offences:

- ¹ Although police and prosecutorial discretion will always play a role in how cases are structured and presented, it is inappropriate for the sentencing outcome to hinge so much on discretionary decisions on the part of the police as opposed to the courts.
- ¹ As Professor Robinson points out, consecutive sentences do not necessarily accord with a sense of justice. Situations can arise where more than one offence has been committed but they are very closely related. For example, a person may, in theory, face charges of committing a burglary on a pharmacy; stealing drugs from the pharmacy owner; possession of those drugs; and supplying the drugs (by sharing them with a friend).

Under Professor Robinson’s proposed model, all cases of multiple offences would be dealt with through a progressive decrease in penalty.

The English and Australian approach is quite different; there, courts tend to impose concurrent sentences, or a mixture of concurrent and consecutive sentences in cases where (as in the previous example) the offences are to some degree related to one another. In other words, the person is convicted of each offence, and they all form part of his criminal record. Sentences are also imposed for each of the offences; however, one or more of the sentences is ordered to run concurrently so that the total sentence reflects the judicial system’s assessment of what ‘justice’ requires by way of punishment.

The Anglo-Australian approach is clearly not without its difficulties (Ashworth 2002) and, intellectually, Robinson's proposals could be worked into a sophisticated scheme of US-style sentencing guidelines. However, in our view, concurrent sentences are not inherently bad and the progressive decrease in penalty approach appears to generate some potential problems. First, it would lead potentially to long sentences for offences which arise out of one incident and which could be adequately dealt with by concurrent sentences. Secondly, there are some cases where wholly consecutive sentences may well be appropriate (such as two separate rape offences). Thirdly, it is likely to be difficult to administer in practice (for example, in deciding which offence carries the 100% sentence, and then in calculating the proportionate decreases for the other offences).

For these reasons, we suggest that consideration be given to a simpler approach than Robinson has suggested.

Recommendation 44: That the courts adopt an approach to the sentencing of multiple offenders under which:

- 1 All sentences are to be concurrent unless the court orders to the contrary;**
- 1 Sentences are to be concurrent for offences that are closely related;**
- 1 Where the offences are not closely related, the court should have the power to order that the sentences be served consecutively or cumulatively; or to impose a 'global' sentence to reflect the totality of the offending behaviour.**

CONCLUSION

This report has raised a number of fundamental concerns with respect to the current operation of Maafushi Prison, and has set these concerns into their broader context. At present, the prison does not provide a safe and secure environment for staff or prisoners and does not provide treatment programs, work or education for prisoners. These issues require urgent attention in order to avoid further riots and disorder within the prison and the prospects of severe international criticism. Crucial to any reform process is the development of an incentives-based regime.

However, it seems impossible for the prison itself to be brought back into control and for a more positive and productive environment to be created unless consideration is given to broader structural changes and to reducing the prison population. Key strategies, in this regard, include:

- 1 Reducing the number of people incarcerated before trial (and giving the DPRS rather than the police the responsibility of housing under investigation inmates);
- 1 Reducing the number of people imprisoned for long periods for drug use;
- 1 Examining the role of new community-based penalties; and
- 1 Introducing new parole and home leave schemes.

It is obvious that a ‘whole of government approach’ will be needed to some of these issues. We counted at least 16 agencies who have a stake in these reforms, including the Attorney General, the Ministry of Home Affairs; the Police; the Ministry of Defence and National Security; the Ministry of Gender, Family Development and Social Security; the Ministry of Planning and National Development; the National Narcotics Control Bureau; the Ministry of Justice; the judiciary; the Human Rights Commission; the Parole Board; the Jail Oversight Committee; the Ministry of Finance; various Atoll agencies; UNICEF; and UNDP. There are probably others that we have omitted.

In view of this, there is much to be said for the establishment of a Presidential Summit – a roundtable discussion in which decisions of principle can be taken and smaller sub-committees established to take action on specific issues.

Recommendation 45: That a Summit comprising all relevant agencies and community groups be held, under the auspices of the President, to progress the issues raised in this report on a whole of government basis; and to lead to the establishment of Working Parties in all relevant areas.

SUMMARY OF RECOMMENDATIONS AND FOUR-YEAR IMPLEMENTATION PLAN

The nature of such a set of far-reaching recommendations is that they overlap in terms of priority. In addition, the achievement of one goal often depends on the simultaneous achievement of another. Thus, it is not possible to set out a precise chronological sequence. We have accordingly indicated a broad priority rating as follows:

- ¹ **2005** indicates that the matter should be proceeded with as soon as possible.
- ¹ **2006/2007** indicates that there is some room to manoeuvre before the problem to be addressed becomes acute.
- ¹ **2007/2008** indicates that there is less urgency

Broadly speaking, security issues necessary to bring Maafushi back to a state of order and safety are designated as 2005. Other regime improvement matters that can be achieved administratively have been designated either 2005 or 2006/2007. Legislative matters have generally been designated 2006/2007, to take account of the realities of governmental processes. Matters requiring long term institutional, cultural or attitudinal change have been designated 2007/2008.

Recommendation 1

The development of custodial services should be undertaken in conjunction with strategies to address the high rates of incarceration of drug users and unsentenced people.
(2005)

Recommendation 2

The following strategies should be adopted in order to ensure a more targeted approach to drug offenders, a better use of resources and an improved prison system:

- (a) **(2006/2007)** Amendments to the *Law on Narcotic Drugs and Psychotropic Substances* to:

- ¹ Reduce the very high minimum penalties that currently apply;

- ¹ Remove the presumption that possession of more than one gram is ‘trafficking’; and
- ¹ Remove the provision that the maximum penalty must be given to repeat drug offenders.
- (b) **(2006/2007)** Legislation to clarify the scope and operation of police referral practices to the DRC.
- (c) **(2006/2007)** Developing a system whereby the courts are able to send appropriate offenders to the DRC regime rather than to prison.
- (d) **(2005)** The DRC to continue with the current TC model but also to consider other possible approaches.
- (e) **(2005)** In line with our general proposals for an incentive based prison regime and for a parole system (below):
 - ¹ Develop a model whereby prisoners may be able to move from Maafushi to the DRC and thence to parole.
 - ¹ Parole decisions to take account of treatment program participation
- (f) **(2005)** NCB to provide drug treatment programs at Maafushi Prison to those offenders who, for security reasons or because of the nature of their offence, must be detained in that facility.

Throughout the system, there needs to be a recognition that people who suffer from drug addiction may well suffer some relapses on the road to rehabilitation.

Recommendation 3

- (2005)** That a commitment be made in principle for both Maafushi and Dhoonidhoo to be managed solely and directly by the DPRS; and
- (2006/2007)** that the necessary transfer arrangements be made as soon as DPRS staffing and skills have been developed as necessary.

Recommendation 4

- (2005)** That the system of judicial review of warrants for detention be strengthened by requiring the police to establish, on the balance of probabilities, that there is a reasonable

basis for the person's continued detention and that no option other than detention is appropriate.

Recommendation 5

(2005) That the new bail scheme be implemented at the earliest opportunity.

Recommendation 6

(2005) That the situation of persons under investigation at both Maafushi and Dhoonidhoo should be proactively and regularly monitored by both the Human Rights Commission and the President's Jail Oversight Committee.

Recommendation 7

That, in the short term, provision be made for:

- ¹ (2005) Drug offenders to be sent directly to the DRC instead of prison (see recommendation 2); and
- ¹ (2006/2007) A trial, at appropriate selected islands, of an approach based on reintegration and reparation by offenders to their own communities rather than banishment.

(2007/2008) That, in the longer term (having brought the prison into good order and after exploring these alternatives) the government abolish banishment as a sentence.

Recommendation 8

(2006/2007) That a *Prisons and Parole Act* be introduced which:

- ¹ States the basic principles of the correctional system;
- ¹ Addresses basic management issues;
- ¹ Establishes a new parole system; and
- ¹ Makes provision for a home leave program.

The legislation should then be progressively amended, as the system improves, to include more detailed reference to issues such as prisoner grievance procedures and the new parole system (see recommendations 39-42).

Recommendation 9

(2005) That a Master Plan be developed for Maafushi Prison in the light of the discussion in this Report. Other relevant Ministries, including Planning and National Development, must be involved in this process. The Master Plan should take account not only of construction needs but also of management regimes, static and dynamic security, prisoner conditions and staff resources.

Recommendation 10

(2005) That a double wire mesh fence, of appropriate design and strength, be constructed around the perimeter, supported by a sensor system linked to the Control Room, and that a road be constructed around the perimeter fence.

Recommendation 11

(2005) That, in planning the perimeter fence, DPRS investigate the possibility of excising NSS and fence facilities so that they are outside the perimeter of the prison, rather than enclosed within it.

Recommendation 12

(2005) That DPRS, as part of its medium term planning, examine whether smaller accommodation units can be created within A1, A2, A7, A8 and A9 or, alternatively, an additional block be constructed on vacant land.

Recommendation 13

(2006/2007) That prisoner placement processes take account broad categories of prisoner as outlined in this Report.

Recommendation 14

(2005) That a new solitary confinement block be constructed within the maximum-security area.

Recommendation 15

(2006/2007) That the isolation cells in A10 be re-furnished and held in reserve for future use as required.

Recommendation 16

(2005) That the maximum-security area be made more secure in the ways described.

Recommendation 17

(2005) That when the security situation has been satisfactorily addressed, prisoners in the maximum-security area be permitted to exercise in the open air.

Recommendation 18

(2006/2007) That the A10 protection area be temporarily closed, cleaned up and re-furnished, stocked with some recreational materials, and then actively managed.

Recommendation 19

(2005) That the detailed security issues identified in this report be addressed as a matter of urgency.

Recommendation 20

(2005) That a secure wire-mesh fence be placed around and between Blocks A1 and A2 and that the tin fences be taken down except in the area where one block would be visible from the other block.

Recommendation 21

(2006/2007) That intra-governmental discussions be held to improve the speed and timeliness of investigations and criminal trials.

Recommendation 22

(2005) That a drug rehabilitation program should be introduced for suitable Maafushi prisoners, to be delivered by the NCB (see also Recommendations 2 and 35).

Recommendation 23

(2005) That the women's accommodation area be expanded and improved in the ways described in this Report (see also Recommendation 34).

Recommendation 24

(2005) That in planning the expansion and improvement of the women's accommodation area, account be taken of the fact that infants and young children will sometimes accompany their mothers (see also Recommendation 34).

Recommendation 25

(2005) That expert technical advice be obtained as to the creation of an integrated communications system for the Maafushi site.

Recommendation 26

(2006/2007) That DPRS negotiate a memorandum of understanding with the NSS and the Police as to the circumstances in which external assistance will be sought and the command structure applicable to such circumstances.

Recommendation 27

(2005) That the body-building equipment in the gym be replaced forthwith by aerobic equipment.

Recommendation 28

(2005) That DPRS, with the assistance of the Government of the Maldives, explore directly and through relevant regional organizations such as APCCA and UNDP the possibility of sending staff to a regional Prisons Department for training in prison management.

Recommendation 29

(2006/2007) That the Police Service should be seen as the natural comparator for the DPRS in terms of pay and conditions.

Recommendation 30

(2005) That the Government of the Maldives re-assess the management resources available to DPRS with a view to bringing in more expertise and providing opportunities for developmental training for senior personnel.

Recommendation 31

(2006/2007) That when resources permit, full medical screenings be carried out on all prisoners upon admission to Maafushi.

Recommendation 32

(2005) That DPRS give attention to improving the availability of gynaecological and other specialized women's health services at Maafushi (see also Recommendation 34).

Recommendation 33

(2006/2007) That DRPS explore what types of work or other relevant programs could be made available on-site, taking note of the need for under-investigation and pending trial prisoners to have incentives to participate.

Recommendation 34

(2006/2007) That a master plan be developed for women's imprisonment. This plan might usefully include input from the Ministry for Gender, Family Development and Social Security, given that agency's responsibility for both women's and family issues.

The plan should include consideration of the following matters:

- ¹ Accommodation, including mother and child facilities (see also Recommendation 24).
- ¹ Drug treatment programs that pay regard to the specific issues facing women.
- ¹ Work and constructive activities.
- ¹ Family and child contact issues.
- ¹ The provision of basic gynaecological services at Maafushi itself and more complex matters in Male.

Recommendation 35

(2005) That there should be a strong and developing focus on drug rehabilitation programs in Maafushi prison, including:

- ¹ The introduction, when feasible, of a Drug Free Unit;
- ¹ Evaluation of the appropriateness of the Therapeutic Community model and other possible approaches; and
- ¹ Consideration of the specific needs of female drug offenders.

Recommendation 36

(2007/2008) That the DPRS, the Ministry for Gender, Family Development and Social Security and the Police Child Abuse Unit, along with other relevant agencies, conduct further research into:

- ¹ The extent of violence and sexual abuse; and
- ¹ The development and implementation of culturally appropriate treatment models.

Recommendation 37

(2005) The President's Jail Oversight Committee and the Human Rights Commission jointly develop a comprehensive program for the regular inspection of Maafushi Prison, Dhoonidhoo Detention Centre and other related institutions and facilities (such as court holding cells and the Drug Rehabilitation Centre).

Recommendation 38

(2005) That, as a matter of urgency, the Prison Oversight Committee and the Human Rights Commission examine avenues to consider significant individual complaints, pending the longer term development (2006-2007) of a more comprehensive framework for handling prisoner grievances.

Recommendation 39

(2006/2007) That the new Prisons and Parole Act should state that collective punishment should only be imposed for collective wrongdoing.

Recommendation 40

(2006/2007) That DPRS should develop a code of conduct relating to prisoners' behaviour and that:

- ¹ Graduated responses to breaches of the Code should be built into the prison management system;
- ¹ Loss of privileges penalties may be administered by unit managers but must be properly recorded and reported to the superintendent; and
- ¹ Solitary confinement should be ordered only by the Superintendent after the prisoner has been given an opportunity to put his case.

Recommendation 41

(2006/2007) That a legislative scheme for a parole system should be introduced within the medium term. The system should be based on an early release model and should apply retrospectively to prisoners who are currently incarcerated as well as those who are sentenced in the future. Responsibility for the system should lie with a Parole Board that is independent of the DPRS and that has relevant representation from stakeholders such as the judiciary and human rights agencies.

Recommendation 42

(2005) Prior to the enactment of enabling legislation, the existing Parole Board, under the aegis of the President, should administer a parole system along the lines it has already proposed. The eligibility criteria should be extended beyond the 2002 model and the Board should issue written guidelines and information about the operation of the scheme. Secretariat resources must be provided to allow this to happen and to allow a general evaluation of the scheme in advance of legislation

Recommendation 43

(2006/2007) That a comprehensive and systematic scheme of home leaves be developed as part of an incentive-based prison regime and as a 'testing ground' for prisoners prior to parole.

Recommendation 44

(2006/2007) That the courts adopt an approach to the sentencing of multiple offenders under which:

- ¹ All sentences are to be concurrent unless the court orders to the contrary;
- ¹ Sentences are to be concurrent for offences that are closely related;
- ¹ Where the offences are not closely related, the court should have the power to order that the sentences be served consecutively or cumulatively; or to impose a 'global' sentence to reflect the totality of the offending behaviour.

Recommendation 45

(2005) That a Summit comprising all relevant agencies and community groups be held, under the auspices of the President, to progress the issues raised in this report on a whole of government basis; and to lead to the establishment of working parties in all relevant areas.

BIBLIOGRAPHY

Alder CM and Polk K (2004), *Strategic Plan for the Reform of the Juvenile Justice System*, prepared at the request of the Attorney General for the Maldives for the United Nations Development Program.

Alder CM and Polk K (2004(a)), *Gender Issues in the Criminal Justice System of the Maldives*, prepared at the request of the Attorney General for the Maldives and the Minister of Gender, Family Development and Social Security, for the United Nations Development Program.

APCCA (2004), *Report of the 23rd Asian and Pacific Conference of Correctional Administrators: Hong Kong, December 2003*.

Ashworth A (2002), *Sentencing and Criminal Justice* (Sweet and Maxwell).

Blagg H and Morgan N (2004), *Systemic Racism as a Factor Contributing to the Over-Representation of Aboriginal People in the Criminal Justice System in Victoria*, report to the Equal Opportunity Commission of Victoria.

Coyle A (2002), *A Human Rights Approach to Prison Management: Handbook for Prison Staff*, International Centre for Prison Studies, King's College London (www.prisonstudies.org).

Macdonald D (2003), *Review and Revision of the Current Legal Framework for Drug Abuse Prevention and Intervention in the Maldives: Issues Paper*, prepared for the United Nations Development Program and the Narcotics Control Board.

Office of the Attorney General of the Maldives (2004), *National Criminal Justice Action Plan 2004-2008*.

Office of the Inspector of Custodial Services (2004), *Report of a Review of Cognitive Skills Training*, Report number 23.

Robinson P (2004), *Report on the Criminal Justice System of the Republic of Maldives: Proposals for Reform*, prepared for the United Nations Development Program.

Robinson P (2004 (a)), *Draft Penal Code*, prepared for the Attorney General for the Maldives.

UNDP (2003), *Rapid Situation Assessment of Drug Abuse in Maldives 2003*.

United Nations Standard Minimum Rules for the Treatment of Prisoners

United Nations Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment.

United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.