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Chairperson: Ms. Majodina

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

Initial report of Maldives (CCPR/C/MDV/1; CCPR/C/MDV/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Maldives took places at the Committee table.*
2. **Mr. Jameel Ahmed** (Maldives), introducing his country's initial report (CCPR/C/MDV/1), said that his Government had a pro-human rights policy and had acceded to the core international human rights instruments with a view to enforcing fundamental standards nationally. Important advances had been achieved even before the adoption of the new Constitution in 2008, including the establishment of a national human rights institution, the appointment of the country's first female judges and the introduction of a reform agenda. Since the adoption of the new Constitution, which included an extensive bill of rights, the country had held its first free and fair multiparty elections, had removed the gender bar for presidential candidates, had established a number of independent oversight bodies, including a Judicial Service Commission and a Police Integrity Commission, as well as a Prosecutor General's Office, and had taken steps to create a fully independent judiciary. New legislation outlawing domestic violence that had secured cross-party support had also recently been enacted.
3. It was an unfortunate fact that despite those advances many crucial pieces of legislation that had been foreseen in the reform agenda and were necessary to implement the rights and principles enshrined in the new Constitution had not progressed beyond the drafting and discussion stage. Legislation still in the pipeline included bills on freedom of information, prisons and parole, equality and non-discrimination, sexual harassment, mental health, freedom of assembly and trafficking in human beings. In addition, many crucial institutions, including the Human Rights Commission, were struggling to keep abreast of the changes heralded by the new Constitution and the transition to a human-rights based democracy and, as a result, had been unable to deliver effectively on their mandates. The newly independent judiciary also faced significant capacity constraints. In the international field, Maldives had made considerable progress in ratifying and reporting on key human rights instruments but its implementation mechanisms still required considerable strengthening.
4. In 2012, Maldives had experienced significant changes that had clear implications for the rights protected under the Covenant. The arrest and abduction of Chief Criminal Court Judge Abdulla Mohamed in mid-January and President Nasheed's subsequent refusal to release him in spite of a Supreme Court order had prompted weeks of unrest that had culminated in the President's resignation.
5. President Nasheed had been succeeded by Vice-President Waheed, who had been duly elected by popular vote on a joint ticket and common policy platform in the 2008 elections. Although President Waheed's succession thus constituted a continuation rather than a change of government and was in full compliance with the corresponding constitutional provisions, some parties had queried the exact nature and sequence of the events behind President Nasheed's resignation and the legitimacy of the current Administration, thereby perpetuating political tensions. In order to resolve those questions and divisions, President Waheed had established a Commission of National Inquiry to investigate the circumstances that had led to the transfer of power, to establish accountability for any human rights violations that might have occurred, and to lay the foundations for reconciliation and dialogue. The Commission was fully impartial and

independent from all branches of government and was expected to deliver its findings by the end of August 2012.

6. Upon assuming office, President Waheed had also published a road map setting forth a series of commitments designed to address the governance, judicial and social challenges the country faced and to cement its fragile democracy. Those commitments included restoring public confidence in democratic institutions by upholding the rule of law, forming a government of national unity, respecting constitutional provisions and human rights, reforming the judiciary, safeguarding media freedom, and organizing free and fair elections in 2013. He had also committed to multiparty talks with a view to finding solutions to the continuing political tensions.

7. As a result of his efforts to encourage dialogue and build consensus, Maldivians had generally been able to continue their daily lives but in the capital regular protests by supporters of the former President were making normal life virtually impossible. The night before the current meeting, for example, a minister's car had been torched, six police officers had been seriously injured and a number of journalists had received head wounds. He wished to emphasize, however, that minimum force was used, that the police showed maximum restraint, and that law enforcement agencies were taking every action necessary to ensure the safety and security of citizens.

8. The Government was opposed to all acts of violence and the recent protests had been violent in nature. The restrictions imposed on them and the crowd dispersal actions of law enforcement officials had been in accordance with domestic law and the law enforcement agencies' legal and moral duty to protect citizens and ensure that individuals acted within the bounds of peaceful assembly. Any allegations of excessive use of force would be investigated by the relevant domestic mechanisms.

9. With regard to his country's progress in implementing the Covenant, he acknowledged that the format adopted for its initial report, which consisted of a short treaty-specific document cross-referenced to a common core document (HRI/CORE/MDV/2010), had attracted some criticism. He wished to emphasize in that connection: firstly, that the reporting format had been designed to minimize delays; secondly, that Maldives was a small, developing State with very limited capacity to prepare discrete reports under each of eight human rights treaties to which it was now a party; and thirdly, that both the common core document and the treaty-specific report had been prepared with support from OHCHR.

10. As to the status of the Covenant in domestic law, article 93 of the new Constitution established that international legal instruments should be transposed into separate domestic legislation in order to be applicable in Maldives. For that reason, in order to bring its legislation more closely into line with Maldives' obligations under international human rights law, a number of new bills had been drafted. Among those currently under review were new antiterrorism legislation and a revision of the Penal Code that had unfortunately been before parliament for several years. However, the current Administration hoped to see its approval before the next elections.

11. Significant progress had been made on gender equality and the empowerment of women, and a new Ministry of Gender, Family and Human Rights had recently been created to assume responsibility for equality and discrimination issues. The Government also had a national gender equality policy, which promoted substantive equality, and was working on specific domestic legislation to implement the rights and obligations contained in the Convention on the Elimination of All Forms of Discrimination against Women that had cross-party support.

12. The transition to democracy had also heralded a firmer stance on the prevention of torture and ill-treatment in prisons, and detailed provisions and safeguards had been

incorporated in sections 45 and 46 of article 16. However, those provisions had yet to be cited in court. After the ratification of the Optional Protocol to the Convention against Torture, a national preventative mechanism had been established within the Human Rights Commission to undertake regular visits to places of detention. The mechanism had made 13 visits in 2009 and had published a number of reports. Although all prisons met minimum standards, the picture gleaned from those reports was one of a system struggling to cope with the pressures deriving from the inadequate facilities, training, procedures and discipline that undermined the rights and welfare of prisoners and put officers at risk.

13. The ongoing effort to improve the system had so far included the renovation of Maafushi jail, the segregation of inmates according to gender and type of offence, the reinstatement of parole, rehabilitation and reintegration programmes, and the reintroduction of officer training programmes. The prison and parole bill, due to be tabled shortly, was seen as a vital tool in the improvement of Maldivian prisons and would modernize and rationalize the prison system by placing far greater emphasis on rehabilitation.

14. Turning to freedom of religion, he said that his Government had no plans to withdraw its reservation to article 18 of the Covenant. Being a Maldivian and being a Muslim were interlinked and inseparable and there was strong public support for his country remaining a 100 per cent Muslim country, although non-Muslim foreign residents were allowed to practise other religions in private.

15. The right to freedom of assembly without prior permission had been enshrined in Maldivian law, and demonstrations and rallies on a range of issues were allowed to proceed in line with the constitutional rights of all Maldivians. Unfortunately, ensuring the responsible exercise of that right remained a challenge as some sections of society took the view that freedom of assembly was absolute. Political demonstrations, for example, were often held late at night, without due notification to the relevant authorities and with little or no regard for the rights and well-being of others.

16. Press freedom has improved markedly. An independent media council had been established to serve as a self-regulatory body and in May 2012 the President had yielded control of the Maldives National Broadcasting Corporation, thereby removing all Government influence over public broadcasting. The new Administration was also taking the action necessary to ensure that journalists were able to work safely and effectively in the run-up to the forthcoming elections.

17. **Ms. Adam** (Maldives), summarizing and supplementing her Government's written replies to the list of issues (CCPR/C/MDV/1/Add.1), said that the rights enshrined in the Covenant were not directly applicable in Maldives but were implemented through the Constitution and relevant secondary legislation. The vast majority of Covenant rights were protected by the new Constitution of 2008. The new Constitution also formalized the establishment and mandate of the Human Rights Commission, first created in 2003, in line with the Paris Principles.

18. Like all States, in combating terrorism the Maldives faced a difficult balancing act between ensuring national security and protecting human rights and freedoms. However, new antiterrorism legislation drafted in 2008 should, once approved, ensure that Maldivian law governing that area fully reflected the country's international obligations, including those assumed under the Covenant.

19. With regard to discrimination, although the 2008 Constitution established that all citizens enjoyed the same rights and freedoms without discrimination of any kind, her Government recognized that enhanced protection was needed under the existing secondary legislative framework and that further legislative developments were required. For example, although her country had taken numerous measures to improve the status of women in the public sphere and eliminate gender discrimination in employment and other

areas, women still faced de facto discrimination. Negative gender stereotyping was institutionalized and remained a significant barrier to equality. She could also confirm that the Government had no plans to withdraw its reservation to article 16 of the Convention on the Elimination of All Forms of Discrimination against Women regarding inheritance.

20. The moratorium on the death penalty remained in place but an amendment to the Clemency Act had been proposed by a private member on the grounds that capital punishment could serve to reduce the steadily increasing rate of violent crime.

21. As the figures provided in response to question 9 of the list of issues confirmed, the number of complaints of torture and ill-treatment received by the Police Integrity Commission had increased dramatically since 2008 as the institution had grown and developed. There had been two indictments, a further three allegations of torture were under investigation and nearly 100 police officers had been dismissed for misconduct since the Police Act had entered into force.

22. Although there had also been a marked increase in the number of cases of domestic violence reported and investigated, the Government was aware that the numbers still did not accurately reflect the scale of the problem. It was hoped that the implementation of the bill on domestic violence would increase victims' willingness to press charges. The Government was determined to address both the prevalence of violence against women and the issue of impunity, and in February 2008 it had amended the relevant sentencing guidelines to ensure more appropriate punishments. Training and awareness-raising programmes for police officers, judges and other public servants that covered child abuse, domestic violence and sexual harassment had also been implemented.

23. Although the rule stipulating that an individual could be detained without a court order for no more than 24 hours was strictly respected by the current Administration, the rule had undoubtedly been breached on a number of occasions under the previous Government. In spite of the intense domestic and international pressure that had ultimately secured the release of Mr. Abdul Gayoom, a member of parliament arbitrarily arrested and detained in 2010, a number of political figures, including the current Minister for Home Affairs, had suffered similar injustices in 2011. The new Administration was giving full support to the relevant institutions in order to uphold due process in arrest and detention.

24. The 2008 Constitution had established the judiciary as a separate and independent branch of the State, and although that independence had been challenged on many occasions over the past three years, the current Government was committed to upholding the principle of independence and would continue to build on the progress achieved.

25. The Government had no plans to remove the restrictions on freedom of religion but it was committed to upholding freedom of opinion, expression and assembly.

26. **Mr. O'Flaherty** said that, although civil and political rights received fairly comprehensive coverage in the common core document, he did not consider the State party's chosen reporting model to be particularly efficient. Moreover, the general consensus among treaty bodies was that integrated reports were not an effective vehicle and that detailed treaty-specific reports were needed in addition to a sturdy core document. He urged the State party to adopt either the standard reporting framework or the list of issues prior to reporting procedure in future.

27. Although the additional information provided in the oral presentation of the list of issues had been very helpful, he was concerned at the suggestion that the Covenant rights were adequately domesticated by the Constitution. For example, language and religion were both excluded from the list of prohibited grounds for discrimination that was incorporated in the Constitution's bill of rights and article 16, which allowed for the limitation of a right or freedom specified in the Constitution where necessary in order to protect the tenets of Islam, was worryingly broad in scope. He did not consider it essential to have a monist model, however, provided that the judiciary was open to the possibility of treaties being

invoked for persuasive purposes. He asked whether the State party was considering that possibility, and also the possibility of covering the Covenant's provisions in judicial training programmes.

28. Noting, lastly, that the International Coordinating Committee of National Human Rights Institutions had granted the Maldivian Human Rights Commission "B status" only on the grounds that its mandate did not support all fundamental rights and freedoms and that non-Muslims could not be appointed as commissioners, he sought assurance that the restrictions would be removed.

29. **Mr. Salvioli**, noting with satisfaction the State party's progress and the withdrawal of its reservation to article 17 of the Covenant, said that he remained concerned about the persistent obstacles to women's participation in public and political life and the very small percentage of women in parliament and the judiciary. Since gender stereotyping had been posited as a key factor in that situation, he asked what strategies were in place for combating stereotyping, whether any public awareness-raising campaigns had been conducted, including in schools, and whether quotas were used to increase women's participation in politics.

30. As discrimination and domestic violence were interlinked, he had also been concerned to hear that in rape cases the testimony of either two male or four female witnesses was required to obtain a conviction. Since in other areas of law a woman's testimony apparently had equal weight in court to a man's, he invited the delegation to explain that anomaly.

31. He urged the Government to include sexual orientation among the grounds for discrimination expressly prohibited in any new anti-discrimination legislation that might be developed and to accelerate ratification of the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

32. Referring to paragraph 40 of the written replies, he asked the delegation to clarify the reasons for the different treatment of women in inheritance matters and how the disparities were compatible with article 3 of the Covenant. He also asked the delegation to explain why marriages between Muslim women and foreign non-Muslim men were prohibited and how the fact that homosexuals could be subjected to ostracism and even flogging was compatible with article 6 of the Convention and the State party's assertion that there were no laws explicitly discriminating against people on the basis of their sexual orientation.

33. Noting that discrimination against women was prevalent throughout the world, including in non-Muslim States, and could not therefore be attributed to religion, he urged the State party to address the machismo and stereotyping that were the key factors maintaining the status quo.

34. **Ms. Waterval**, referring to the proposed amendment of the Clemency Act, said that she would appreciate an explanation of the difference between a private member's bill and a bill from a member of parliament. As the proposal would make the death penalty mandatory if upheld by the Supreme Court, it was an issue of grave concern, especially since minors could, in some cases, be held criminally liable. She would like information about the possible consequences of the amendment's adoption and urged the State party to consider legislation abolishing the death penalty altogether instead. She would also like to know whether the State party would revoke the amendment in order to comply with the Covenant in the event that it was approved in parliament.

35. **Mr. Thelin** said that he shared Mr. O'Flaherty's concerns regarding the reporting model adopted. He also shared his concerns about the rank of the Covenant in domestic law, since if the civil and political rights enshrined in the Constitution were subordinate to religious tenets, the universality of those rights, as established under the Covenant, could be called into question.

36. Acknowledging that recent events were likely to have changed perspectives in relation to states of emergency and counter-terrorism, he asked whether the antiterrorism bill, which had been in the drafting stage for four years, was being delayed by technical issues or lack of political support. Was the bill's approval being impeded by political rivalries similar to those candidly acknowledged to be preventing the adoption of the new Penal Code?

37. According to the written replies, compensation for the victims of the Sultan Park bombing had been awarded not by the courts but by the Tourism Ministry, which seemed unusual. Clarification as to why the courts that had convicted the perpetrators had not awarded compensation, whether only foreigners had been injured and what compensation had been awarded would therefore be appreciated.

38. Returning to the State party's clear statement that it had no plans to withdraw its reservation to article 18 concerning freedom of religion, he said that in paragraph 109 of its core document, the State party appeared to retreat somewhat from that stance. The fact that it had not entered reservations to articles 2, 20, 26 and 27 suggested that some elements of freedom of religion were maintained and, as the Special Rapporteur on freedom of religion or belief had noted in a 2007 report, it would appear that the reservation extended only to the manifestation aspects of freedom of religion and not to the right to have or to adopt a religion or belief of one's choice. If that interpretation was correct, he saw no reason why the State party could not withdraw the reservation altogether.

39. Having heard disturbing reports of systematic and systemic torture and a lack of adequate mechanisms for dealing with complaints, he would like to know whether the Commission of National Inquiry established to investigate the events of early 2012 would also be responsible for investigating any allegations of torture that might emerge or whether the courts would retain jurisdiction for such incidents. With the protests and demonstrations continuing, he would also like to know which authority would have jurisdiction for events since February, noting that, despite the State party's assurances of restraint and minimum use of force, complaints of ill-treatment would inevitably arise. The delegation had referred to article 16, sections 45 and 46, in connection with the prevention of torture and ill-treatment, but it was unclear whether those provisions were contained in an existing law or a bill currently before parliament.

40. He welcomed the detailed statistics concerning complaints received by the Police Integrity Commission, which had been established in 2008 by the Police Act. However, as the Commission operated within the structure of the police force and the Ministry of the Interior, he wondered whether it would have the requisite independence to deal with complaints about the security forces. Moreover, a large proportion of complaints were dismissed, and no more than three cases were submitted each year to the Prosecutor General's Office. He also enquired about arrangements to deal with complaints of abuse of detainees by prison staff. Noting that there was collaboration for reasons of economy between the defence forces and the police, he asked how complaints of abuse by defence-force officials were addressed. Did victims apply to the Human Rights Commission, for instance, or to a public prosecutor or the police?

41. He quoted a report published in June 2012 by the international NGO known as Redress, which had undertaken an investigation of torture in Maldives covering the period 1978 to 2008 and had obtained testimony from victims. The report cited 24 cases of torture, none of which had been addressed by the criminal justice system. Many of those interviewed, according to Redress, had reported severe and repeated violence against, and abuse of, persons in State custody. Forms of torture and ill-treatment had included the use of suspension, beatings with fists and bars, kicking, blindfolding and handcuffing, the dislocation of joints and breaking of bones, drowning of detainees or forcing them into the sea, placing of detainees in water tanks, burning them, shining bright lights into their eyes,

leaving them outside for days while tied to a tree and, in one case, tying a detainee to a crocodile's cage. Sexual assault and humiliation had also been routinely used. Many of the testimonies suggested that the only limit to the torture and ill-treatment inflicted was the imagination of the officials responsible. Admittedly, the alleged abuses had occurred under the previous regime. However, the existing regime had a responsibility to undertake investigations and to bring the perpetrators to justice. If an atmosphere of impunity was maintained, they would continue to abuse persons under their control.

42. According to paragraph 55 of the replies to the list of issues, the Police Integrity Commission was not empowered to promote the rehabilitation and compensation of victims. He asked whether applications for compensation had to be pursued through the courts and whether any action was being taken to rectify the situation.

43. He welcomed the enactment of the Domestic Violence Act and the amendment of the sentencing guidelines to provide more appropriate punishments for perpetrators of sexual abuse. It was unclear from paragraph 61 of the replies, however, whether the sentences handed down consisted predominantly of fines or terms of imprisonment.

44. He noted that the State party was moving from a confession-based to a forensic system of evidence. However, sharia law was still applicable to cases involving sexual relations outside marriage, which, in the absence of a confession, required four male witnesses. That provision arguably constituted a violation of the Covenant. It also raised questions regarding intra-marital rape, which should, of course, be recognized as an offence. He asked whether there were any shelters in Maldives for women victims of sexual abuse.

45. According to the "shadow report" of the Human Rights Commission, there was no legislation prohibiting corporal punishment in schools but it was prohibited by the Ministry of Education. Paragraph 72 of the replies, on the other hand, claimed that corporal punishment was prohibited by law. He requested clarification of the situation.

46. He asked which crimes were punishable by flogging under sharia law and whether such sentences were handed down in practice. According to paragraph 75 of the replies, women were far more likely to be publicly flogged than men. The Government was apparently seeking to ensure that such punishments were not applied in a discriminatory manner. The easiest solution, in his opinion, would be to abolish them completely.

47. **Sir Nigel Rodley**, referring to the transfer of authority that had taken place in February 2012, noted that, according to the delegation, Mr. Nasheed and Mr. Waheed had been elected by popular vote, on a joint ticket and a common policy platform, in the 2008 elections. Article 112 (b) of the Constitution required candidates for the presidency to publicly declare the name of the Vice-President who would serve with them. He took it that they had complied with that requirement. He also asked whether the name of the proposed Vice-President, i.e. Mr. Waheed, had appeared on the ballot.

48. Referring to President Waheed's commitment to hold free and fair elections in 2013, he asked whether elections had previously been scheduled for that date. At the time of the transfer of authority, the Government had first undertaken to hold elections in 2012 and had then retracted its undertaking. Given the desirability of public endorsement of the new Government's legitimacy, he enquired about the grounds for the change of plan.

49. Noting the allegation that the former President's letter of resignation might have been obtained through duress, he looked forward to hearing about the findings of the Commission of National Inquiry, which were due to be issued in August 2012. Whatever the outcome, the polarization of the country was such that some preparation of Maldivian society might be required to ensure the maintenance of public order. There seemed to be some contradiction in the delegation's oral introduction. It had stated at one point that

Maldivians had been able to enjoy their daily lives in the normal way but had then claimed that violent protests were making normal life in the capital impossible. He wished to hear more about the efforts of Maldivian society to come to terms with what were clearly highly stressful circumstances.

50. **Mr. Iwasawa** said that the initial report of Maldives, although it had been submitted quite speedily compared with those of other States parties, regrettably failed to comply with the Committee's revised guidelines (CCPR/C/2009/1) adopted in October 2010. However, the core document (HRI/CORE/MDV/2010) was quite detailed and many passages related to the Covenant. He also recognized that Maldives was a small island developing country whose capacity to prepare reports for the many treaty bodies was limited. Moreover, the written replies were very substantial.

51. He urged the Maldivian authorities to opt for the Committee's new procedure involving a list of issues prior to reporting for its future periodic reports.

52. **Mr. Neuman**, referring to the bill concerning the enforcement of the death penalty, drew attention to article 6, paragraph 4, of the Covenant, which stated that anyone sentenced to death should have the right to seek pardon or commutation of the sentence, and that it should be possible to grant an amnesty, pardon or commutation of the death sentence in all cases. The State party had not entered a reservation to that provision. Its reservation to article 18 was not applicable to article 6.

53. **Mr. Ben Achour** said that the Maldivian Constitution, drafted in 2008, contained provisions that were similar to those in the constitutions of almost all Muslim countries. Chapter 2 set forth universally recognized fundamental rights and freedoms. However, article 2 stated that Maldives was a republic based on the principles of Islam. Freedoms and rights were guaranteed, provided that they were compatible with the precepts of Islam. The status of religion in the Constitution thus had a direct impact on issues pertaining to the family, women, citizenship, criminal law and many other matters. He urged the State party to draw inspiration from the modernist interpretation of Islam, which went a long way towards reconciling religious precepts with universally recognized human rights.

54. He asked to what extent Maldivian criminal legislation permitted corporal punishment such as flogging, stoning, amputation and other Islamic penalties.

55. NGOs claimed that the Maldivian authorities were not taking sufficiently strong action to combat the use of violence, especially against political opponents of the Government, by law enforcement agencies. He asked what measures were being taken to monitor and control abusive conduct, particularly by the police.

56. **Mr. Bouzid** said that, according to paragraph 75 of the replies to the list of issues, the Penal Code did not prescribe flogging as a punishment. However, it was ordered for certain offences prescribed in the sharia. He asked whether it was ordered by the ordinary courts or by special sharia courts.

57. Noting that, according to the same paragraph, women were more likely to be publicly flogged but the use of forensic evidence might remedy such discrimination, he asked whether forensic evidence was now used in cases of adultery. He also asked whether the Government was taking steps to abolish the penalty of flogging.

The meeting was suspended at 5.15 p.m. and resumed at 5.20 p.m.

Organizational and other matters

Draft preliminary statement of the Committee on the strengthening of the United Nations treaty bodies (continued)

58. **The Chairperson** invited the Committee to consider the draft preliminary statement (document without a symbol) circulated to members.

Preamble

59. **Mr. Thelin** said that the term “additional” in the new third sentence of the preamble (“The Committee agrees that the system is in need of strengthening, including through the receipt of adequate additional resources”) could be misleading. He suggested changing the wording to “including through sufficient and sustained resourcing”.

60. *It was so decided.*

61. **Mr. Neuman**, referring to the language added to the penultimate sentence (“The Committee recalls that the intergovernmental process must respect the integrity of the respective treaties, embrace a multi-stakeholder approach, respect the powers of the treaty bodies to decide on their own working methods and rules of procedure and guarantee their independence”) said that he had only proposed the first and third of those obligations. He had no objection to adding the obligation to guarantee the treaty bodies’ independence but felt less comfortable about saying that a multi-stakeholder approach must be adopted since the legal grounds for doing so were not as strong. He suggested removing that element.

62. **Mr. O’Flaherty** explained that the passage was an amalgamation of the suggestions made by various Committee members. He agreed that the reference to a multi-stakeholder approach should be removed.

63. **Mr. Thelin** suggested removing the wording “embrace a multi-stakeholder approach”, replacing it with the word “and”, and retaining the reference to guaranteeing the treaty bodies’ independence.

64. **Sir Nigel Rodley** said that the reference to guaranteeing the treaty bodies’ independence might make the Committee sound unduly defensive, as if it perceived its independence to be under threat. He would therefore prefer it to be removed as well.

65. **The Chairperson** said that she, too, was concerned about the implied defensiveness of the phrase since the treaty bodies’ independence should be taken for granted.

66. **Mr. Thelin** said it was appropriate to remind States that the treaty bodies were independent in their work; he felt strongly that the reference to the need to guarantee that independence should be retained.

67. **Mr. O’Flaherty** agreed with Mr. Thelin.

68. *The preamble, as amended, was adopted.*

Paragraph 1

69. **Mr. Flinterman** suggested that in the second sentence the word “more” in the phrase “while also acknowledging its more challenging consequences”, should be deleted.

70. *Paragraph 1, as amended, was adopted.*

Paragraphs 2 to 4

71. *Paragraphs 2 to 4 were adopted.*

Paragraph 5

72. **Mr. Kälin** said that, in the last sentence, “subject to the treaty provisions” should be replaced by “subject, however, to the respective treaty provisions” since treaties differed in some regards.

73. *Paragraph 5, as amended, was adopted.*

Paragraph 6

74. **Sir Nigel Rodley** said that the term “concern” in the first sentence struck the wrong note since it was associated with the Committee’s observations on negative situations in States parties. He suggested “doubt”, “scepticism” or “misgiving”.

75. **Mr. O’Flaherty** suggested “unease”.

76. *Paragraph 6, as amended, was adopted.*

Paragraph 7

77. **Mr. Bouzid** said that the paragraph should be more forcefully worded because the Committee should welcome friendly settlements by States parties in individual cases. Such settlements should, however, respect the principles established in conformity with the parties’ acceptance of the Covenant.

78. **Mr. O’Flaherty** said that the working group had also thought at the outset of its discussion that friendly settlements should be welcomed, but it had become clear that certain issues still needed to be addressed. The wording therefore deliberately expressed restraint.

79. **Ms. Waterval**, noting that friendly settlements were not mentioned in the Covenant or Optional Protocol, said that the subject required further discussion.

80. **Mr. Salvioli** said that friendly settlements were important because States tended to comply better with the agreements they reached with complainants. It was, however, essential to ensure that treaty bodies would be able to approve or reject such settlements since States sometimes pressured alleged victims into accepting settlements that did not meet established international human rights standards.

81. **Mr. Rivas Posada** said that a clear distinction should be made between encouraging or welcoming friendly settlements and playing an active role in facilitating them or mediating between the parties, which would be a dangerous and unacceptable course. The imbalance of arms between the State and the alleged victim rightly aroused scepticism about friendly settlements, and that concern was duly expressed in the paragraph.

82. **Mr. Flinterman** said that it was preferable to maintain the present text.

83. **Mr. Thelin** agreed.

84. **Mr. Kälin** suggested that the wording “as well as what would be the proper role of the treaty bodies in this regard” should be added at the end of the second sentence.

85. **Sir Nigel Rodley** said that the Committee would have to be involved in ensuring that friendly settlements were reached freely and not as the result of inequality of arms. The paragraph was only a preliminary observation on the matter, however, and as such was suitably neutral. It did not suggest that the Committee welcomed the proposal, only that it was interested. He would agree to it being adopted with or without the proposed amendment.

86. **The Chairperson**, speaking as a member of the working group, said that she would be happy with the text as it stood since it acknowledged that there were many issues that might even leave the procedure open to abuse. She would not object to Mr. Kälin’s proposed addition either.

87. *Paragraph 7, as amended, was adopted.*

Paragraph 8

88. **Mr. O'Flaherty** explained that the paragraph had been included because excluding it might imply that the Committee was trying to avoid a sensitive issue.
89. **Mr. Rivas Posada** said that it was not appropriate for the Committee to issue an opinion on a matter directly affecting Committee members or relating to their conduct.
90. **Mr. Bouzid** said he did not understand why the Committee should state that it would not comment. In his view, the paragraph could be omitted.
91. **Mr. Thelin** said that not including the paragraph might raise more questions than including it, which indicated that the Committee had not overlooked the matter.
92. *Paragraph 8 was adopted.*

Paragraphs 9 to 14

93. *Paragraphs 9 to 14 were adopted.*
94. **Mr. O'Flaherty** said that it was important for the preliminary statement to be placed in the public domain as soon as possible and brought to the attention of the General Assembly. He asked whether the secretariat would facilitate the participation of a Committee member in the thematic discussion on strengthening and enhancing the effective functioning of the human rights treaty body system to be held in New York from 16 to 18 July 2012.
95. **Mr. Thelin** said that the whole exercise was intended to ensure that the Committee's views would be expressed by a Committee member in that discussion. It was important for the Committee to be represented there since chairpersons of other treaty bodies would also be present. Since the Chairperson of the Human Rights Committee was not able to accept the invitation, he suggested that the Committee should agree to send Mr. O'Flaherty as Vice-Chairperson and as a Committee member who was particularly well versed in the matter.
96. **Sir Nigel Rodley** said that it would be appropriate not only to make the preliminary statement public, but also to convey it to particularly interested parties, such as the President of the General Assembly, his co-facilitators of the intergovernmental process on strengthening and enhancing the effective functioning of the human rights treaty body system, and the President of the Human Rights Council, and to inform them that the other treaty bodies had received the statement as well.
97. **Mr. O'Flaherty** suggested that the secretariat should also send the statement directly to the 167 States parties to the Covenant to ensure that it would be widely disseminated.
98. **The Chairperson** said it had been decided that morning to send an envoy to the New York meeting regardless of certain technicalities, such as the issue of a formal invitation, which had yet to be resolved. The preliminary statement would be distributed by the secretariat to the recipients mentioned, to the chairpersons of the other treaty bodies, and possibly to all members of the General Assembly since the strengthening of the treaty body system was a General Assembly issue.
99. **Mr. O'Flaherty** said that the issue of travel authorization for his attendance at the New York meeting had yet to be resolved.
100. **The Chairperson** said she took it that there would be no major obstacles.
101. **Mr. Walker** (Secretariat) said the co-facilitators had informed the secretariat that it had been decided that the representatives of the treaty bodies at the thematic discussion

would be the Chairperson and Vice-Chairperson of the Chairpersons' Meeting, and no official invitation would therefore be extended to the Human Rights Committee. The discussion was open, however, to observers, and Committee members could therefore attend. Unfortunately, however, the secretariat had no funds for financing the journey.

102. **Mr. Thelin** said that he strongly objected to the fact that the secretariat was unable to make it possible for the Committee to act upon one of its decisions at a crucial time for strengthening the treaty body system.

103. **Mr. Salvioli** said that since not all 18 members of the Committee had attended the session, the corresponding savings could possibly be used to fund Mr. O'Flaherty's journey to New York.

104. **Ms. Waterval** supported the suggestion made by Mr. Salvioli.

105. **Sir Nigel Rodley** said that he did not support the suggestion. The Committee was beginning to behave in an undignified manner. The lack of financing was not the main issue. It was highly regrettable that the secretariat had not found the means to ensure an invitation to the meeting in New York, and he would like that to be the issue revisited within the next 24 hours rather than the funding of travel expenses.

106. **The Chairperson** said that there was still time to work with the secretariat to resolve the matter.

The meeting rose at 6.05 p.m.