



General Assembly

Distr.: General
10 August 2010

Original: English

Human Rights Council
Working Group on the Universal Periodic Review
Ninth session
Geneva, 1–12 November 2010

Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1

Maldives*

The present report is a summary of 7 stakeholders' submissions¹ to the universal periodic review. It follows the structure of the general guidelines adopted by the Human Rights Council. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. Lack of information or focus on specific issues may be due to the absence of submissions by stakeholders regarding these particular issues. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the four-year periodicity of the first cycle of the review.

* The present document was not edited before being sent to United Nations translation services.

I. Background and framework

A. Scope of international obligations

1. Joint Submission 1 (JS1) stated that the Maldives held a reservation to article 16 of CEDAW as provisions of Islamic Shariah govern all marital and family relations.²

B. Constitutional and legislative framework

2. In the absence of legislation on women's rights, sexual harassment and domestic violence, other obligations under CEDAW remain unimplemented. Consequently, violence against women goes largely unchecked.³

3. Joint Submission 1 (JS1) noted that, with the partisan politics prevailing in the People's Majlis (Parliament) leading to recurrent deadlock, the legislative framework necessary both to enact the changes mandated by the Constitution and protect fundamental rights had not been created.⁴ The Human Rights Commission of Maldives (HRCM) also noted that Article 93 of the Constitution required international legal instruments to be incorporated into national legislation for them to be applicable in the Maldives. Although this would not affect the legal obligations of the State, such legislation is needed to ensure full compliance with international standards within the country.⁵

4. JS1 also noted that in November 2009, Parliament passed a bill on special procedures for child sex offenders with harsher penalties and longer jail terms. The law proposed jail terms without the possibility of parole or early release, and suspended the right to silence and release from detention while investigation is ongoing. However, under article 14 of the Act, if a person is legally married to a minor under Islamic Shariah, none of the offences specified in the legislation would be considered a crime.⁶ JS1 further recommended: passing and enacting legislation for state protection of neglected children; establishing proper social services system; sensitizing influential groups, such as island leaders, imams and women's committees, to child rights; reviewing and reforming the state protection mechanism for orphans, juveniles and delinquents; considering mechanism for fostering of children under *Kafalah* of Islamic law; outlawing under-age marriages; and improving counseling at schools.⁷

C. Institutional and human rights infrastructure

5. According to JS1, the HRCM was established in December 2003 by presidential decree, while the HRCM Act was passed in August 2005. Further amendments were made in August 2006 to bring it in line with the Paris Principles.⁸

6. HRCM stated that it currently held 'B' status accreditation with the International Co-ordination Committee of National Human Rights Institutions (ICC) and is an Associate Member of the Asia-Pacific Forum of National Human Rights Institutions (APF).⁹

7. Further, HRCM stated that it faced a number of challenges in having its recommendations implemented and institutionalizing its relationship with the different organs of the State. The establishment of effective modalities for co-operation and assistance between the HRCM and the Majlis, the courts and government agencies, which is vital for the work of the HRCM, has so far been met with mixed success. HRCM efforts to institutionalize relations with the Majlis, including proposals for the establishment of a

standing committee on human rights in the Majlis, and systematic processes for review of bills for human rights compliance, have failed to materialize.¹⁰

8. HRCM stated that in December 2007, it was designated as the National Preventive Mechanism under the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment.¹¹

D. Policy measures

9. HRCM noted that human rights mainstreaming in government policy formulation and service delivery still remained very much a long-term goal rather than an established practice. Although work on compiling a National Human Rights Action Plan was initiated by the HRCM in 2007, the new Government had not done enough progressive work to finalize this plan.¹²

10. HRCM noted that differences of opinion and extremist views in religious matters threatened the delivery of fundamental rights, including the rights to freedom of expression and assembly and especially with regard to economic and social rights of women and the girl child. It recommended educational and awareness programmes aimed at promoting harmony between Islamic Shariah and international human rights law.¹³

II. Promotion and protection of human rights on the ground

Implementation of international human rights obligations, taking into account applicable international humanitarian law

1. Equality and non-discrimination

11. The Institute on Religion & Public Policy (IRPP) noted that citizenship is only granted to Muslims and non-Muslims are not allowed to vote or hold office.¹⁴

12. JS1 stated that women in the Maldives faced institutionalized discrimination and marginalization in opportunities for higher education and employment. Despite making up 40 percent of government employees, women had a significantly lower participation in public life and the private sector, where they are unlikely to hold leadership positions. Of the 77 members of parliament, only five are women, while there are only four female judges on the bench. In 2007, unemployment among women aged 15 to 24 was 40 percent.¹⁵ HRCM expressed concern on the large number of women being subject to sexual or physical abuse, gender disparities in access to tertiary education, and socio-cultural barriers to employment and public participation of women.¹⁶

13. HRCM further noted that negative perception and attitudes remained the most fundamental barriers to the full, effective and equal participation in society for persons with disabilities. Accessibility issues impeded persons with disabilities from interacting fully in realizing basic rights such as education, health and employment. Their participation in political and public life was similarly impeded. The needs of persons with disabilities needed to be integrated more comprehensively into policies, plans and development activities. Hence, the HRCM called for the speedy ratification of legislation on persons with disabilities and measures to combat negative attitudes towards persons with disabilities.¹⁷

2. Right to life, liberty and security of the person

14. HRCM noted that the national child protection mechanisms and procedures remained severely inadequate to deal with the dramatic increase in child abuse cases

reported to the Department of Gender and Family Protection Services, and the Maldives Police Service. Co-ordination between stakeholders is a major area for improvement. Despite the recent legislation protecting children from sexual abuse, overly strict evidentiary requirements, and the gravity of the crime not being adequately reflected in the severity of the sentence, and non-enforcement of sentences still existed as problems. Non-institutional rehabilitative measures for child victims were extremely limited, and there was a pressing need for improved counseling services, especially in the atolls. Preventive programmes needed to be organized in a more systematic manner and as a collaborative effort between the various stakeholders.¹⁸

15. According to JS1, drug addicts comprise 80 percent of the prison population, compounding the problem of criminalization of young offenders. The lack of proper rehabilitation and aftercare services coupled with social stigma leaves most addicts without access to treatment or employment for reintegration into society - existing facilities could only treat 200 addicts a year.¹⁹

16. Global Initiative to End All Corporal Punishment of Children (GIEACPC) noted that corporal punishment was lawful as a sentence for crime. As such, corporal punishment can be applicable to any person who has reached puberty for crimes of apostasy, rebellion, fornication, defamation, drinking, theft and offences relating to homicide. According to GIEACPC, the 2006 draft Penal Code does not allow for retribution or amputation, but it authorizes lashes. GIEACPC also stated that there was no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions.²⁰

17. GIEACPC further noted that corporal punishment is lawful in the home. GIEACPC further noted the Government's commitment to prohibition of corporal punishment in all settings, including the home. According to GIEACPC, the 2006 draft Penal Code would introduce a legal defence for the use of corporal punishment in the home and other settings.²¹ GIEACPC also stated that there was no explicit prohibition of corporal punishments in schools. According to GIEACPC, the Ministry of Education has stated that corporal punishment should not be used, however, the draft Penal Code would introduce a legal defence for the use of corporal punishment by teachers.²² GIEACPC further noted that corporal punishment is lawful in alternative care settings.²³

18. GIEACPC recommended that the Government enact and implement legislation to ensure complete prohibition of corporal punishment of children, including within the family home and as a judicial sentence under Islamic law.²⁴

19. JS1 noted a study conducted by the former Gender Ministry in December 2008 that one in three women aged between 15 and 49 reported some form of physical or sexual violence at least once in their lives, while one in five suffered physical or sexual violence at the hands of their partner. In most cases of reported physical or sexual violence against women, the perpetrators escape justice.²⁵

20. JS1 recommended: establishing a mechanism for protecting abused women and those vulnerable to abuse; ensuring legal redress for gender-based violence; conducting an inquiry to determine if female genital mutilation is being practiced; expediting passage of legislation on women's rights, sexual harassment and domestic violence.²⁶

21. JS1 noted that the detention system was characterized by lack of both trained staff and an oversight mechanism to address allegations of custodial abuse.²⁷ JS1 further stated that lack of space and facilities in prisons constitute a major hazard to detainee rights. Maafushi jail, the country's largest prison, has a capacity of 400 persons, but was housing close to 700 inmates in October 2009. Acute overcrowding led to three major riots during the past year. Moreover, failure to separate hardened criminals from minor offenders has led to violence among inmates and caused further deterioration of prison safety.²⁸

3. Administration of justice, including impunity and the rule of law

22. JS1 noted that while Article 285 of the Constitution required the Judicial Service Commission (JSC) to approve and re-appoint judges before the end of the interim period on 7 August 2010, none of the judges had so far been given tenure, leading to uncertainty and fear of job security among the 170 to 200 judges currently on the bench and potentially influencing their judgments.²⁹

23. JS1 also noted that judicial reform rests on the passage of crucial legislation currently before parliament. Among other challenges facing the judiciary include capacity problems together with a lack of qualified legal professionals in the system - compounded by senior judges who either do not possess the requisite training or show an unwillingness to use it. While there is no minimum educational standard for judges, inadequate infrastructure and space for courtroom makes trials inaccessible to either the media or the public and compromises the transparency of proceedings. Moreover, access to justice is impeded by a lack of access to lawyers and the absence of outposts for independent commissions outside the capital. Islanders forced to travel to Male' face high transport costs, while ongoing cases require that they stay for long periods.³⁰

24. JS1 further stated that failure to sensitize judges to human rights was believed to be responsible for the low conviction rate and lenient sentences for child abuse cases. In the case of the 12-year old girl who was gang raped, the four male suspects cleared of the crime were later sentenced to two years of banishment following a High Court appeal and public outcry. Moreover, a lack of creativity in working around the limitations of the existing and outdated penal code and rigidity in sentencing contributes to the low conviction rate.³¹

4. Right to privacy, marriage and family life

25. JS2 noted that while the Maldivian Penal Code does not regulate sexual conduct, it is regulated by un-codified Shariah law, which criminalizes homosexual acts. The punishment is banishment for nine months to one year or shipping of 10 to 30 strokes for men and house arrest for nine months to one year for women.³² JS2 further recommended Maldives bring its laws into conformity with its international human rights obligations by repealing all provisions that criminalize sexual activity between consenting adults of the same sex.³³

5. Freedom of religion or belief, expression, association and peaceful assembly and right to participate in public and political life

26. JS1 noted that as the geographic dispersion of the 194 inhabited islands of the Maldives had made the provision of public services increasingly difficult and impractical the revised constitution stipulates decentralized administration. One-third of the country's population lives in the capital Male' and the population of the other 193 islands range from 100 people to 12,000. In the recent past, the island and atoll offices established by the previous government, assisted by quasi-government bodies known as atoll and island development committees, have stagnated due to a lack of authority and control over resources.³⁴ According to JS1, in 2009, the new Government proposed legislation to devolve decision-making powers to elected local councils. However, parliament remains deadlocked following an intractable dispute over the Government's policy of dividing the traditional 21 administrative areas into seven provinces for service de-concentration. The opposition insists that the creation of seven provincial councils instead of 21 atoll councils would be unconstitutional. Following the failure of the two main parties to reach a compromise amidst seven consecutive forced cancellations of sittings and protests outside parliament, the bill was withdrawn in December 2009.³⁵

27. IRPP noted that the law requires that all citizens practise Islam. While restricting non-Muslim religions from establishing a community in the country, the Government has a tight grip on the required Muslim religion.³⁶ IRPP further noted that as the Constitution does not allow for religious freedom, citizens lack basic liberties. However, few cases of societal discrimination induced by religious belief or practice existed and there had been no reports of religious prisoners or detainees, and that no cases of forced religious conversion had been reported.³⁷

28. According to JS1, as of March 2009, the new Government had blocked eight local websites and one international website perceived as un-Islamic by extremist elements within the Islamic Ministry. The websites were blocked on the instruction of the Islamic Ministry, controlled by the religious conservative Adhaalath party of the ruling coalition. In November 2009, parliament unanimously accepted a bill in parliament to outlaw places of worship for non-Muslims.³⁸

6. Right to work and to just and favourable conditions of work

29. JS1 stated that the right to collective bargaining was not addressed either in the Constitution or the Employment Act of 2008. In the absence of legislation to form trade unions, a spate of strikes by resort workers in November 2008 was violently suppressed by the police.³⁹ JS1 went on to state that although both the Constitution and the Employment Act provided for equal remuneration and prohibited discrimination, the provisions had not been consistently enforced, no measures had been taken against continuing discrimination and the Government had not publicly announced policies to prevent discrimination and provide equal opportunity in employment. Employment-related disputes were the most common complaint lodged at the HRCM over the past two years.⁴⁰ HRCM stated that despite the constitutionally-guaranteed right to fair and equal conditions of work, and the existence of an Employment Act, implementation of employment related legislation was in need of much improvement. The institutional mechanism necessary for such implementation is weak, and conditions of work, especially in the private sector and in relation to migrant workers, were not monitored in a systematic and regular manner.⁴¹

30. Moreover, according to JS1, the Government is currently locked in litigation with the Civil Service Commission (CSC) over controversial and unpopular pay cuts implemented in October 2009. In August 2009, the Government introduced a raft of austerity measures to alleviate the budget deficit. Following protracted negotiations with the CSC, the Government reduced civil servants' salaries by 10 to 15 percent. In February 2010, the CSC voiced concern that the pay cuts were discriminatory against civil servants as other public officials were not subject to it.⁴²

31. JS1 recommended passing and enacting legislation for the formation of labour unions; enforcing provisions of Employment Act on equal pay and unfair dismissals; strengthening functioning of the nascent Labour Tribunal and Labour Relations Authority; and improving coordination among government offices and state institutions to ensure civil servants are not caught in legal disputes.⁴³

7. Right to social security and to an adequate standard of living

32. JS1 noted that while the Constitution prohibited discrimination based on mental and physical disabilities and stipulates special privileges for and protection of disadvantaged groups, the Maldives lacked a comprehensive social security system, including social workers and facilities to ensure mobility and access to public services for persons with disabilities.⁴⁴ JS1 went on to note that the Maldives acceded to the Convention on the Rights of Persons with Disabilities (CPRD) in October 2008. The new Government submitted a Disabilities Bill to parliament last year based on the CRPD, which was passed by parliament in December 2009. However, following an appeal by NGOs, the government

decided not to ratify the bill as it was believed to be in conflict with provisions of the CRPD. The final legislation was criticized for lack of health rehabilitation and following a medical model instead of being inclusive or rights-based.⁴⁵

33. JS1 recommended: expediting passage of disabilities legislation to ensure accessibility for people with special needs to public and private services and establish facilities at public places such as parks and ferries; providing affordable rehabilitation and aftercare services for recovering drug addicts; and actively curbing drug trafficking, utilizing full powers of customs authorities to check private vessels.⁴⁶

34. According to HRCM, healthcare accessibility is an area of major concern as islands outside of Malé mostly house very basic healthcare facilities and because affordable and scheduled transport services between islands have not been sufficiently established. Specialized medical care therefore remains costly, time consuming and outside the reach of most island populations. Availability of specialist consultation, especially in the areas of women and adolescent health is limited to regional centres. Medical ethics guidelines, policies governing personal health data and the right to access to information of patients need to be introduced. Quality monitoring guidelines, protocols and mechanisms also need to be developed to ensure that a prescribed level of minimum service is being afforded to patients. Comprehensive healthcare legislation to govern rules of quality, accessibility and medical ethics, will contribute to a marked improvement in healthcare standards.⁴⁷

35. JS1 noted a study of the HRCM that found that 68 percent of families in the capital were living in accommodation that qualified as slums by UN definitions and a quarter of all families live in one room. Participants in the survey from Male' and Villigili spent 85 percent of their income on rent and utilities. JS1 further noted that although the provision of affordable housing was a key priority of the new Government, action had so far not been taken to tackle skyrocketing rents and implement housing schemes.⁴⁸

36. HRCM expressed concern about the lack of minimum standards for housing and inadequate reference to the Right to Adequate Housing in Government policy formulation stating that the establishment of national minimum standards, in line with international best practices, for housing was imperative. Further HRCM noted that finance for housing development needed to be made more widely available and affordable. The Housing Development Finance Corporation remained inactive in terms of providing new loans in 2009 as it lacked the financial resources to continue lending.⁴⁹

37. According to JS1, the Constitution stipulates that the state shall provide clean water and establish a sewerage system and electricity system on every inhabited island. In late 2009, seven Public Utility Companies created by the government began taking over community powerhouses, which were established by islanders through local fundraising, donations and government assistance. In several cases, the powerhouses were taken over without consultation and in contravention to the rulings of island courts. In the wake of litigation over compensation in several islands and backlash from communities, the Government dissolved the Island and Atoll Development Committees, which had previously provided municipal services.⁵⁰ HRCM recommended that the Government develop and implement long-term strategies for the provision of safe and adequate water.⁵¹

8. Right to education

38. According to HRCM, although universal primary education has been achieved, availability of quality education, provision of secondary and, to a greater extent, tertiary education faces resource and capacity constraints. Access to mainstream education for children with disabilities, and increased inclusivity of local communities in school management are important areas for review and improvement. Work to incorporate human rights into school curricula is presently underway.⁵²

9. Migrants, refugees and asylum-seekers

39. HRCM noted that there had been a dramatic increase in the numbers of undocumented migrant workers, due to reasons such as employment agencies abandoning migrant workers on arrival, not extending work permit of the migrant workers even though initial sponsorship was processed by the agency and the migrant workers simply arriving on tourist visas. Their illegal status made them hesitant in expressing their grievances to the relevant authorities. Most migrant workers, who were abandoned while engaged in low paying day jobs, were vulnerable to exploitation by employers.⁵³

40. JS1 stated that the absence of a monitoring mechanism and the failure to offer legal protection under the Employment Act left migrant workers vulnerable to exploitation. While in most cases their accommodation lacked proper ventilation or supply of fresh water and adequate sanitary facilities, migrant workers who face non-payment of wages had little or no access to justice.⁵⁴ Further, JS1 noted that as identity and travel documents were often confiscated upon arrival, many expatriate workers were unable to quit their jobs before paying the large sums paid as commissions to receive employment, creating debt bondage or forced-labour type situations and a growing problem of illegal immigrants.⁵⁵

41. JS1 recommended that the Maldives sign and ratify the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families; promulgate laws to enforce stricter punishments for violations and hold employers and employment agencies accountable; criminalize forced labour in the penal code; establish a minimum wage; formulate and communicate a national policy on migrant workers; regulate the role of employment agencies; allow for registration of workers on islands other than Male'; ensure regular inspection of work sites and accommodation; establish minimum standards of housing through legislation; and establish separate bureau for migrant workers to handle complaints and issue quotas and permits.⁵⁶

III. Achievements, best practices, challenges and constraints

42. Joint Submission 3 (JS3) noted that one of the most serious threats to the human rights of the people of the Maldives is the vulnerability of their environment to the impacts of climate change. The threats confronting the Maldives illustrate how the right to an ecologically healthy environment is fundamental to guaranteeing other rights such as the rights to life, food, water, health, security and a means of subsistence.⁵⁷

43. JS3 further stated that the primary responsibility for the protection of human rights of the citizens of the Maldives rests with the State. However, the causes and impacts of climate change on the human rights of Maldivians also lies with states that are major emitters of greenhouse gases. The international community and particularly those nations historically and currently responsible for the greatest portion of greenhouse gas emissions has a responsibility to prevent climate change from undermining the human rights citizens of the Maldives and, where particular circumstances make that not possible, to mitigate the harms and assist the victims.⁵⁸

IV. Key national priorities, initiatives and commitments

N/A

V. Capacity-building and technical assistance

44. HRCM noted that raining of care workers, police, court officials and judges needed to be improved to ensure that child abuse cases are processed with the best interests of the child as the primary concern.⁵⁹

Notes

¹ The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org. (One asterisk denotes a non-governmental organization in consultative status with the Economic and Social Council).

Civil society

- GIEACPC Global Initiative to End All Corporal Punishment of Children;
 IRPP The Institute on Religion & Public Policy, Washington, USA;
 JS1 Joint Submission submitted by: Maldivian Detainee Network, Transparency Maldives, Maldives Aid, Madulu, Democracy House, Care Society and Rights for All;
 JS2 Joint Submission submitted by: International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), International Gay and Lesbian Human Rights Commission, and ARC International;
 JS3 Joint Submission submitted by: Earthjustice, Pohnpei Women Advisory Council (Federated States of Micronesia), Many Strong Voices, Human Rights Advocates and Greenpeace.

National human rights institution

HRCM Human Rights Commission of the Maldives, Malé, Maldives.

- ² JS1, para. F2.
³ JS1, para. F2.
⁴ JS1, para. A2.
⁵ HRCM, para. 10.
⁶ JS1, para. E3.
⁷ JS1, p. 6.
⁸ JS1, para. A4.
⁹ HRCM, para. 2.
¹⁰ HRCM, para. 5.
¹¹ HRCM, para. 3.
¹² HRCM, para. 6.
¹³ HRCM, para. 32.
¹⁴ IRPP, para. 4.
¹⁵ JS1, para. F1.
¹⁶ HRCM, para. 31.
¹⁷ HRCM, para. 11.
¹⁸ HRCM, paras. 21–22.
¹⁹ JS1, para. D5. See also HRCM, paras. 18–19.
²⁰ GIEACPC, para. 1.3.
²¹ GIEACPC, para. 1.1.
²² GIEACPC, para. 1.2.
²³ GIEACPC, para. 1.4.
²⁴ GIEACPC, p.1.
²⁵ JS1, paras. F2 and F3.
²⁶ JS1, p. 7.
²⁷ JS1, para. H1.
²⁸ JS1, paras. H2 and H3. See also HRCM, paras. 23–24.
²⁹ JS1, para. A5.
³⁰ JS1, para. I4.
³¹ JS1, para. I5.

- 32 JS2, p.1.
- 33 JS2, p.2.
- 34 JS1, para. J1.
- 35 JS1, para. J3.
- 36 IRPP, para. 1.
- 37 IRPP, para. 17.
- 38 JS1, para. K2.
- 39 JS1, para. B1.
- 40 JS1, para. B3.
- 41 HRCM, para. 16.
- 42 JS1, para. B5.
- 43 JS1, p. 3.
- 44 JS1, para. D1.
- 45 JS1, paras. D2 and D3.
- 46 JS1, p. 5.
- 47 HRCM, paras. 28–29.
- 48 JS1, para. G1.
- 49 HRCM, paras. 24–25.
- 50 JS1, para. G3.
- 51 HRCM, para. 20.
- 52 HRCM, para. 25.
- 53 HRCM, para. 26.
- 54 JS1, para. C2.
- 55 JS1, para. C3.
- 56 JS1, p. 4.
- 57 JS3, para. 15.
- 58 JS3, para. 16.
- 59 HRCM, paras. 21–22.
