

HRCM Submission to the Universal Periodic Review of the Maldives, November 2010

Introduction

1. The Human Rights Commission of the Maldives (HRCM) was first established under Presidential Decree on 10 December 2003. On 18 August 2005, the Human Rights Commission Act was ratified, thereby making the HRCM the first independent and autonomous statutory body in the Maldives. The amendments brought to the Human Rights Commission Act in August 2006 broadened the mandate and powers of the HRCM, making it compliant with the Paris Principles. With the ratification of the Constitution in August 2008, the HRCM was made an independent and autonomous constitutional body.
2. The HRCM currently holds ‘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).
3. In December 2007, the HRCM was designated as the National Preventive Mechanism under the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment.

The UPR Process

4. This Report covers a period of four years from 2006. In compiling this Report, the HRCM conducted consultations with government, State institutions, NGOs and public in Malé and selected atolls with significant population centres, and circulated the draft document for comments from government agencies, NGOs and the general public.

Institutional Framework

5. The HRCM faces a number of challenges in having its recommendations implemented and institutionalising 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 met with mixed success. HRCM efforts to institutionalise 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 materialise.
6. Human rights mainstreaming in government policy formulation and service delivery still remains 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 has not done enough progressive work to finalise this plan.
7. Deliberate disrespect towards upholding the rule of law at this early stage of modern democracy in the country has the potential of creating an adverse response by citizens towards democracy as a system of governance. Moreover, HRCM believes that failure to implement legislative and regulatory frameworks will inevitably lead to human rights violations. Strengthening institutional mechanisms for the implementation of laws and

regulations, and creating awareness are vital for inculcating a culture of respect for human rights, rule of law and democracy.

Legal Framework

8. The Maldives has ratified 6 of the 9 core international human rights instruments, and is signatory to all core instruments with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. *The HRCM has recommended the government to sign up to and ratify the instruments to which the Maldives is not party.*
9. Chapter II on Fundamental Rights and Freedoms of the Constitution includes the catalogue of internationally-recognised human rights and freedoms and is a major advancement on previous constitutional texts in terms of human rights promotion and protection. However, *supporting legislation is urgently required for details on the nature of specific rights and their relationship to rights of others.* In addition to providing detailed information on the access and availability of constitutionally guaranteed rights, supporting legislation will also provide much needed clarification and precise delineation of rights and freedoms.
10. Article 93 of the Constitution requires international legal instruments to be incorporated into national legislation for them to be applicable in the Maldives, meaning that international legal instruments, including those previously ratified, will now need to be supported by separate domestic legislation. Although this does not affect the legal obligations of the State, *such legislation is needed to ensure full compliance with international standards within the country.*

Rights of Persons with Disabilities

11. Negative perception and attitudes remain the most fundamental barriers to the full, effective and equal participation in society for persons with disabilities. Accessibility issues impede persons with disabilities from interacting fully in realising basic rights such as education, health and employment. Their participation in political and public life is similarly impeded. *The needs of persons with disabilities need to be integrated more comprehensively into policies, plans and development activities.*

Right to Adequate Housing

12. The equivalent of 85 percent of the households in Malé, which constitute more than a third of the population, live in houses that fall short of meeting all components of the Right to Adequate Housing.
13. The Government announced in January 2009 plans to build 10,000 housing units, with several hundred of the units pledged to specific islands. The HRCM is concerned, however, about the lack of consultations with local island communities in developing the project and related land use plans. The continuing practice of allocating land also needs to be reviewed in light of plans for the housing scheme.
14. HRCM is also concerned about the lack of minimum standards for housing and inadequate reference to the Right to Adequate Housing in Government policy formulation. *The*

establishment of national minimum standards, in line with international best practices, for housing is imperative.

15. Finance for housing development needs 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. *The HRCM recommends the speedy implementation of the recommendations contained in its housing report¹.*

Employment Rights

16. Employment related complaints constituted the largest number of complaints submitted to the HRCM in the past three years. Despite the constitutionally-guaranteed right to fair and equal conditions of work, and the existence of an Employment Act, *implementation of employment related legislation is 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, are not monitored in a systematic and regular manner.
17. The Maldives became a member of the ILO in May 2009 and preparatory work is underway for the country to sign up to the ILO core conventions. It has to be borne in mind in the implementation of labour legislation that trade unions, tripartite consultations and collective bargaining are all new concepts in the Maldives, and particular attention therefore needs to be on the formulation and functioning of effective monitoring mechanisms for the delivery of these rights. *The HRCM recommends the speedy implementation of the recommendations contained in its employment report².*

Substance Abuse

18. More than 90 percent of the prison population are drug offenders and the majority of such prisoners are youth. Public perception is such that drug abuse is an issue for retribution rather than one for rehabilitation. Penalties for drug use and possession and trade need to be differentiated, with the former aligned with rehabilitative programmes. It is imperative to *strengthen coordination between the drug rehabilitation system and the criminal justice system* in order to effectively address drug-related crime and the rehabilitation needs of drug offenders. *Effective measures needs to be practiced for the pre-release, transition and aftercare treatment for the drug offenders.*
19. The existence of only a single residential rehabilitation centre, the lack of a halfway house and availability of just two detoxification centres with limited capacity, indicate an *urgent need to expand availability of and accessibility to treatment facilities* throughout the country.

Scarcity of Water

20. The annual dry season, which runs from February to June, demands extra measures to make up for the depletion in water supply. As the present means and methods for water

¹ HRCM, Rapid Assessment of the Housing Situation in the Maldives, 2008

² HRCM, Rapid Assessment of the Employment Situation in the Maldives, 2009

collection and storage are neither sufficient nor ensure good quality, accessibility and availability of water, long-term solutions are needed to address the shortages during the annual dry season. *The HRCM recommends that the Government develop and implement long-term strategies for the provision safe and adequate water.*

Child Protection

21. The national child protection mechanisms and procedures remain 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 exist as problems. *Training of care workers, police, court officials and judges, needs to be improved to ensure that child abuse cases are processed with the best interests of the child as the primary concern.*
22. Non-institutional rehabilitative measures for child victims are extremely limited, and there is a pressing need for improved counselling services, especially in the atolls. *Preventive programmes need to be organised in a more systematic manner and as a collaborative effort between the various stakeholders.*

Persons Deprived of Their Liberty

23. There is no separate institution for juvenile detention and thus juveniles are kept, sometimes in the same cells, with adults. There are also situations where persons detained by police, persons remanded in custody and persons serving their sentences are held together on the same premises. Prisoners are also not segregated by category of offence, gender, medical condition, or security risk. Hence, the absence of categorised detention and overcrowding are major concerns in detention centres, especially in light of the increasing crime rates. Rehabilitation, education facilities and employment opportunities are unavailable as a means of Restorative Justice. *Institutional strengthening, capacity building and establishing autonomy of the Department of Penitentiary and Rehabilitation Services (DPRS) are major issues for prison reform.*
24. The legal framework governing persons deprived of their liberty must be strengthened in order to ensure procedural and administrative safeguards. *HRCM strongly recommends that staff in the relevant institutions are provided with adequate professional guidance and training in dealing with children, persons with disabilities and mental illnesses.*

Right to Education

25. 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, and the HRCM hopes this will be completed soon.

Rights of Migrant Workers³

26. 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 makes them hesitant in expressing their grievances to the relevant authorities. Most migrant workers, who are abandoned while engaged in low paying day jobs, are vulnerable to exploitation by employers.

Healthcare

27. Initial findings of the HRCM's Health Assessment (2010) reveal that there is grave concern regarding the corporatisation of health facilities, without proper consultation and involvement of the communities and healthcare professionals. Likewise the assessment also indicates that healthcare availability is hampered by shortages of essential drugs and medicine outside of Malé, especially in islands with small populations.

28. 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. Specialised 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. The majority of healthcare facilities on the islands are inaccessible to persons with physical disabilities.

29. 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.*

30. Although a social health insurance scheme, “*Madhana*”, was introduced in 2008, the scheme is not widely available in the atolls, island pharmacies are not registered in the scheme and island populations lack sufficient knowledge of the scheme and its benefits.

Gender Equality

31. *Educating lawmakers and policy makers is crucial to expanding legal and administrative protection presently afforded to women, especially those subject to gender based violence, single mothers and working women. 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, are areas for concern.*

³ See annexed HRCM report on Rapid Assessment of Employment Situation in the Maldives, 2009