

A. SUMMARY

1. This **submission** covers a period of four years since the last review of the Maldives by the Human Rights Council (HRC) during its first cycle in November 2010¹. This submission aims to comply with HRC resolutions 16/21 and 5/1, the Technical Guidelines of the OHCHR and other relevant documentation governing the participation of stakeholders in the Universal Periodic Review (UPR).

2. In its **methodology** for the preparation of this submission, ARC evaluated and examined in detail the agreed recommendations of the Maldives in its previous review, its follow-up Mid-term Implementation Assessment (MIA), concluding observations from the Committee on the Rights of the Child², deliberations with national stakeholders including the NHRI, civil society members, data collected through ARC's campaigns and projects, and finally information available in the public domain.

3. The Government of Maldives has made great strides in recent years to genuinely address severe gaps in the country's child protection system and have made numerous commitments both domestically and in international fora to further underline its obligation to promote and protect the rights of the child in the Maldives. However, the rapidly changing political landscape in the country stemming from a quick succession of governments in early 2012 and again in 2013 saw priority and resources shift away from existing human rights mechanisms and responsibilities. It was evident that within the space of three years, three different governments that came to power gave varying levels of consideration to Maldives human rights obligations, specifically the rights of the child due to a myriad of factors which include political instability in the country, religious and nationalist sentiments as well as a weak judicial system. Nevertheless, in 2013 the Maldives was re-elected as a member of the HRC for the term 2014-2016. Its voluntary commitments and pledges outlined an impressive framework for both domestic and international engagement, and if pursued actively, could address significant challenges in its discourse.

B. SCOPE OF INTERNATIONAL OBLIGATIONS

(a) Third Optional Protocol to the Convention on the Rights of the Child on a communications procedure

4. Despite the leadership role played by the Maldives in the drafting of the Third Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OP3-CRC) in the HRC, and its prompt signature of the Protocol on 28 February 2012, the Maldives is yet to ratify the Protocol³. Also during its re-election to the HRC for the term 2014-2016, the Maldives reiterated its commitment to ratify the Third Optional Protocol⁴. Since then, there have not been any significant developments to indicate the Government's willingness to ratify the Protocol. ARC believes that ratification of this Protocol would be a significant milestone to empower victims of abuse, especially when domestic remedies are either dysfunctional or ineffective due to a lack of legislation and protection measures.

Recommendation: Ratify promptly the Third Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

(b) Reservation to Article 21 of the Convention on the Rights of the Child

5. During the first cycle, the Maldives partially accepted recommendations from a number of countries to withdraw its reservation to Article 21 of the Convention of the Rights of the Child.⁵ At the time, the Maldives agreed to begin consultations with national authorities to declare an alternative form of care relating to adoption of children. In its mid-term implementation assessment the Maldives indicated that it is in the process of completing necessary internal procedures to withdraw the reservation, without specifying the steps it had taken to do so. ARC welcomes this positive development and reiterates the necessity to consider this recommendation since it would provide the State with adequate policy options to consider adoption and alternative forms of care and alleviate some of the present challenges.

Recommendation: To review the reservation made to Article 21 of the CRC with a view to withdrawing or limiting it.

C. CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK

(a) Law on Child Protection

6. A “Child Protection Act” is currently being drafted by the State. Members of civil society did have a limited opportunity to provide their inputs and it remains unclear if those inputs were considered or incorporated. ARC had proposed amendments to the existing draft to ensure its compliance with the CRC as well as with international standards and best practices. This draft will replace the Child Rights Protection Act⁶ (9/1991) which was signed into law before the ratification of the CRC by the Maldives in 1991 and is therefore outdated, and does not include key provisions and principles of the CRC. ARC hopes that the new Act will incorporate important measures for the protection of children and that the draft will be submitted to the Parliament at the earliest.

Recommendation: To complete the enactment of the draft Child Protection Act and to ensure that it is brought in line with the provisions of the CRC.

Recommendation: To safeguard the rights of the child, especially the girl child by including special provisions in the draft Act to counter child, early and forced marriage and to criminalize such attempts involving children under the age of 18 as sexual abuse offenses against children.

(b) Law on Sexual Abuse of Children

7. In 2009 the Parliament enacted the Child Sex Abuse Offenders (Special Provisions) Act⁷ to set out for the first time in the country, measures to deal with child sex offenders including during the investigative and judicial stages and also procedures to monitor convicted offenders following their release from imprisonment. It was hailed as a landmark achievement in criminalizing the use of child prostitution and pornography in the country and was a genuine attempt to incorporate into the domestic legal framework, provisions of the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, which the Maldives acceded to in May 2002.⁸

8. However, the Act itself failed to address certain issues deemed sensitive in society. For example, Article 14 states that “*sex offenses within this law shall not be deemed as an offense when carried out with a child with whom the person has marital relations with as per Islamic principles*”⁹. ARC believes this greatly undermines efforts to combat child, early and forced marriage in the Maldives, which is largely unreported and is on the rise at an alarming rate. Furthermore, the Article in question goes against Maldives’ own commitments and obligations under both the CRC and the CEDAW and runs contrary to the international positions taken by the Maldives, most recently as a co-sponsor of HRC resolution 24/23 entitled “*Strengthening efforts to prevent and eliminate child, early and forced marriage*”¹⁰ and UN General Assembly resolution 68/148 entitled “*Child, early and forced marriage*”.¹¹

Recommendation: Amend the Child Sex Abuse Offenders (Special Provisions) Act to repeal Article 14 of the Act, which perpetuates and exacerbates child, early and forced marriage in the country.

Recommendation: Implement as required by the law, all provisions and measures pursuant to the enforcement of the Child Sex Abuse Offenders (Special Provisions) Act, especially Article 48 concerning the testimony of a child during the trial process and, Article 57 that stipulates the establishment of a “sex offender’s registry”.

(c) Penal Code

9. The new Penal Code (9/2014) was signed into law on 13 April 2014 following almost a decade of consultations in the Parliament to replace the Penal Code of 1961. However, the new Code provides a one-year grace period between the date of ratification and entry into force, enabling the new Code to come into effect in April 2015. While the new Penal Code is a remarkable improvement to its predecessor, some articles and provisions in the Code fell short of Maldives international commitments. For example, minors could still be sentenced to death in contravention of Article 37 of the CRC and Article 6 of the ICCPR. Despite the contradictions, the Government has publicly stated that the new Code is in line with recent public calls to reintroduce the death penalty following a spate of high-profile crimes in the country. The Government was of the view that the new Penal Code imposes a higher burden on the State including the Judiciary in passing sentences.¹²

10. The Maldives has long resisted calls to abolish the death penalty and corporal punishment in the country despite being formerly committed to maintain a moratorium on the use of the death penalty¹³. However, in 2012 the Maldives abstained in its vote in the UN resolution 67/176 entitled ‘Moratorium on the use of the death penalty’, which was a change in position given the fact that the Maldives voted in favor of the same resolution in 2010¹⁴. Since then, the Government has argued that any moves to abolish the death penalty or corporal punishment would be in contravention to Article 10 of the Constitution¹⁵.

11. In May 2014, two minors were sentenced to death over crimes that were committed when they were minors¹⁶. While the new Penal Code specifically states that minors convicted of murder sentenced to death shall only be executed once they turn 18¹⁷, under international law minors who were convicted of offences committed under the age of 18 shall not be sentenced to death.

Recommendation: Since the Maldives does not have any reservations to Article 37 of the CRC and Article 6 of the ICCPR, ARC recommends that the State uphold its international legal obligations and adopt immediate measures to undertake an absolute ban on the death sentence against persons below the age of 18 at the time when the offence was committed.

(d) Law on Human-Trafficking

12. On December 2013, the Prevention of Human-Trafficking Act (12/2013) was signed into law by the Parliament following the continuous inclusion of the Maldives in the “Tier 2 Watch List” of the United States Department of State Report on Trafficking in Persons¹⁸. The Maldives had been on the Watch List for three consecutive years and faced a further downgrade to Tier 3¹⁹ when the Government took action to pass legislation despite previous initiatives to stem the flow of forced labour and sex trafficking.

13. The Act includes a separate chapter and specific sections on protecting children from human trafficking and sexual exploitation with harsher punishments to offenders²⁰. The Maldives must be commended for adopting this legislation following years of debate on how best to approach this issue, but there are a number of steps that still need to be taken to ensure that the Act is fully implemented to counter human trafficking, forced labour and sexual exploitation.

Recommendation: To fully implement the Prevention of Human Trafficking Act in the Maldives by formulating all the necessary guidelines and procedures as required by the Act, especially (a) to identify child victims of trafficking and (b) to provide humanitarian and legal assistance to potential child victims.

Recommendation: ARC welcomes the ratification of the United Nations Convention against Transnational Organized Crime by the Maldives in 2013²¹, and recommends that the Government accede to the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children.

D. INSTITUTIONAL AND HUMAN RIGHTS INFRASTRUCTURE

(a) Children’s Shelters

14. here are currently three children’s shelters in the Maldives, “*Kudakudhinge Hiya*” and “*Amaan Hiya*” in Villi-Male’, and the “*Education and Training Centre for Children*” (*ETCC*) in the island of Maafushi. The shelters are a home to orphans, neglected, abused, at risk or abandoned children in the country between the ages of infancy and adulthood (0-18 years). Although the shelters are supervised by the Ministry of Gender and Law, they all face a litany of challenges in its day-to-day operations often exacerbated by an inadequate number of qualified professional staff and careworkers.

15. ARC remains deeply concerned about the welfare of children in shelters, particularly issues ranging from children’s play needs, education, health and safety, as well as the policies concerning the placement of children in the shelter and the manner of their reintegration to society. The lack of established procedures and guidelines to prepare children for the physical relocation of their environment often lead to traumatic experiences and there have also been instances where children have been returned to their own families only to be brought back to the shelter following re-victimization.

16. Children in shelters continue to face discrimination in the mainstream school system from some of the teachers, students, and their parents. They are often excluded from extracurricular activities, are labeled or suffer targeted abuse mainly because of their foster nature and the absence of parents or legal guardians to supervise their school activities. Children are not prepared for life outside the shelter and are also not provided adequate psychosocial support including counseling, which contributes to several behavioral issues.

17. Effective policies and regulations are also needed on reporting and dealing with abuse and neglect within shelters themselves. An efficient staff monitoring and investigation system needs to be put in place to avoid the risk of abuse to children by careworkers and members of staff.

Recommendation: To promptly approve and implement the National Minimum Standard Guidelines and Standard Operational Procedures for children’s shelters, and other policies and regulations to ensure that decisions concerning children in alternative care, are based on the best interests of the children.

Recommendation: To establish an effective and transparent monitoring mechanism by the State to oversee any relocation of children from the Children’s Shelter, including their reintegration into society, to ensure that such transitions are well planned, and guarantees that they are relocated into a safe environment which provides a higher standard of care and protection.

E. CAPACITY-BUILDING & TECHNICAL ASSISTANCE

(a) Capacity-Building

18. The child protection system in the Maldives is considered extremely limited in its ability to respond to the needs of children, either in matters of welfare or in prevention and prosecution of offenders due to an acute deficiency in capacity and expertise at different levels within the system. The well-known case of the 15-year old rape victim who was sentenced to flogging for pre-marital sex shocked the country and drew widespread international condemnation²². The case exposed huge gaps in the capacity of line ministries and agencies, the judicial sector and the Police Service in dealing with such cases of abuse, and the lack of political will and technical capabilities to implement necessary changes. ARC believes that international assistance to enhance and strengthen those capabilities is absolutely vital to strengthen both the child protection system and the ability of the State to effectively promote and protect the rights of the child.

Recommendation: Seek the support and cooperation of the Office of the High Commissioner for Human Rights and the international community, to enhance the capacity of the State to uphold its obligations under international human rights law by providing adequate training and expertise through the United Nations Development Assistance Framework and by mainstreaming human rights in major State policies.

¹Report of the Working Group on the Universal Periodic Review, A/HRC/16/7, UNHRC, January 2011.

²Fourth and Fifth Period Reports to the Committee on the Rights of the Child, CRC/C/MDV/4-5, September 2012.

³United Nations Treaty Collection, Chapter IV (Human Rights), 11.d 'Optional Protocol to the Convention on the Rights of the Child on a communications procedure'. https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11-d&chapter=4&lang=en

⁴Voluntary Commitments and Pledges, Maldives candidature for re-election to the HRC 2014-2016, A/68/350, p.4-5.

⁵Recommendations made by *Slovenia, Palestine, Brazil, Slovakia, Spain*, Report of the Working Group on the Universal Period Review (Maldives), 16th Session of the HRC, A/HRC/16/7, p.15.

⁶Act no. (9/1991)

⁷Act no. (12/2009)<http://www.agoffice.gov.mv/pdf/sublawe/CSAO.pdf>

⁸United Nations Treaty Collection, Chapter IV (Human Rights), 11.c 'Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography' https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-11-c&chapter=4&lang=en

⁹Act no. (12/2009), Article 14, p. 6. <http://www.agoffice.gov.mv/pdf/sublawe/CSAO.pdf>

¹⁰Office of the High Commissioner for Human Rights, Human Rights Council resolutions (24/23) <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Pages/ResDecStat.aspx>

¹¹Report of the Third Committee (A/68/452), p. 36-37. <http://www.un.org/en/ga/68/resolutions.shtml>

¹²Mid-term Implementation Assessment of the Maldives to the UPR, p. 39-41.

¹³Report of the Working Group on the Universal Periodic Review on Maldives, A/HRC/16/7/Add.1, p.4.

¹⁴Maldives voted in favour of resolution 65/206 'moratorium on the use of the death penalty'. <http://www.un.org/en/ga/65/resolutions.shtml>

¹⁵Constitution of the Republic of Maldives,<http://www.presidencymaldives.gov.mv/Documents/ConstitutionOfMaldives.pdf>

¹⁶Amnesty International,<http://www.amnestyusa.org/news/news-item/maldives-must-commute-death-sentences-for-two-juvenile-offenders-convicted-of-murder>

¹⁷Penal Code (6/2014), Article 53 (c).

¹⁸United States Department of State, Trafficking in Persons Report.<http://www.state.gov/j/tip/>

¹⁹Ibid, <http://www.state.gov/j/tip/rls/tiprpt/2014/226649.htm>

²⁰Prevention of Human Trafficking Act (12/2013), Chapter 8.

²¹United Nations Treaty Collection, Chapter XVIII (Penal Matters), 12 'United Nations Convention against Transnational Organized Crime' https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-12&chapter=18&lang=en

²²Amnesty International, <http://www.amnesty.org.uk/blogs/sms-action-network/maldives-15-year-old-rape-survivor-be-flogged-fornication>