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Written contribution for the UPR documentation of Maldives

By United Nations Development Programme Country Office Maldives

Independence of the judiciary

I. Background

1) The 2008 Maldivian Constitution is based on the principle of separation of powers and has provisions for the creation of an independent judiciary in the Maldives for the first time. The new Constitution furthermore guarantees certain fundamental rights and freedoms to every person, including civil and political, as well as economic, social and cultural rights. The major challenge for the justice sector is to ensure that people living across the 187 inhabited islands of the Maldives understand these rights and can claim them through fair and accessible justice mechanisms.

2) The judiciary has become a major point of tension and disagreement with political parties in the country and has caused challenges to the consolidation of democracy in addition to the lack of public trust in the judicial system. During the Presidential Elections of 2013 the Supreme Court became highly politicised in deciding the cases that were filed regarding the validity of election results. This eventually led to the removal of the Chair and Vice-Chair of the Elections Commission under a Regulation promulgated by the court to try cases on its own motion for Contempt of Court. There are also serious gaps in the legal system: misinterpretation of the concepts of independence of the judiciary; accountability in the selection and appointment procedures for judges; lack of transparency and adequacy of the Judicial Service Commission (JSC) in executing their responsibilities; lack of protection for judicial actors; precarious situation of women in the justice system.

II. Achievements and good practices:

• Legal Framework for the Independence of Judiciary

3) The new Constitution has a chapter solely dedicated to the judiciary. It contains provisions to ensure the independence and impartiality of national courts and regulate their jurisdiction, functions and administration. It also lays down the qualifications of judges and magistrates, their mode of appointment, salary and allowances, security of tenure, and removal. These provisions have been complemented by the Judges Act and the Judicature Act of 2010.

• Development of a Continuous Judicial Education Curriculum

4) The Supreme Court of the Maldives has embarked on the task of developing a continuous judicial education curriculum for the Maldivian judiciary with the support of UNDP. The lack of a comprehensive training programme has been highlighted by many as a constraint in effectively dispensing justice under the new Constitution. The education curriculum is expected to remedy this issue.

• Enactment of the New Penal Code

5) After a period of 10 years in the legislature the Penal Code has been finally passed and ratified in April 2014. This will bring an overhaul to the criminal justice system. The Code is comprehensive in nature and also for the first time has given sentencing guidelines. However, the Criminal Procedure Code and the Evidence Act needed for the effective implementation of the Code is yet to be passed by the parliament.

III. Challenges

• Lack of a comprehensive legal framework

6) The current Maldivian legal system relies on a complex combination of common law and Islamic Shari'a. Several essential pieces of legislation are outdated or simply lacking and some have been pending before the Parliament for years. The judiciary needs to be given adequate tools, in line with the principles enshrined in the Constitution, to function properly and with legal certainty. The penal code

which has been enacted has provisions related to capital and corporal punishments which include death penalty for heinous murders and flogging for sexual intercourse out of marriage.

- **Selection and appointment of judges**

7) The JSC had to determine whether or not those judges already in office at the time of the adoption of the Constitution possessed the constitutionally-required qualifications.¹ The provisions in the Constitution were basic guidelines but the parliament was unable to enact the required laws within the given timeframe. In the absence of a Judges Act, the JSC had the responsibility to come up with transparent and fair guidelines for vetting judges. The Commission's guideline was highly contested as it did not meet the standard envisaged by the constitution for the judiciary to have highly qualified judges. Under the guidelines, sitting judges who did not possess secondary education were re-appointed. Similarly to determine what good conduct is, a list of offences were included and anyone found guilty of those offences would not qualify from the criteria of good conduct. Judges could be guaranteed tenure, even those who had documented ethical violations but were never prosecuted under the system that existed prior to 2008. As the practice was back then, even if disciplinary action was taken against a judge he may never have been prosecuted.²

- **Political turmoil and challenges to the Independence of Judiciary**

8) Despite the constitutional safeguards aimed at ensuring respect for the separation of powers, a number of incidents where both the executive and legislative powers have directly or indirectly interfered with the independence of the judiciary illustrate the difficulties encountered by the Maldives on its transition towards democracy and upholding the rule of law. At the same time, the judiciary seems to have retreated behind closed doors, refusing to enter into a substantive dialogue with the other powers of the State to address the situation.

9) One of the major political incidents to note between the executive and judiciary was the unlawful detention of the Chief Judge of the Criminal Court Abdulla Mohamed in January 2012 by the then-president alleging the Judge had been interfering with the investigations of corruption related to a number of powerful politicians.

IV. Recommendations

- The current composition and functioning of the JSC should be revised in line with international principles of independence and accountability of the judiciary.
- All allegations of misconduct in the judiciary, including corruption, should be properly investigated under previously set, clear and transparent rules.
- The JSC should take appropriate measures to enforce the code of conduct of judges in a transparent and consistent manner.
- The Parliament should urgently pass all essential pieces of legislation, such as the Criminal Procedure Code, the Civil Procedure Code and the Evidence Act, and ensure that these laws are in line with Maldives international obligations.
- A comprehensive review of the new Penal Code should be done in order to bring it in line with Maldives international obligations.
- Judges, magistrates, prosecutors and lawyers should have access to quality education, including continuing education and specialized training on international human rights law and mechanisms, constitutional law, comparative law, women's rights and gender equality, among others.

¹ Article 285 of the constitution available at <http://agoffice.gov.mv/pdf/ga/EngGA.pdf>

²http://velezinee.aishath.com/sites/default/files/Naakaamiyaabuvi_himeyn_bagaavai_book_Velezinee_web_version.pdf

Freedom of Association and Assembly

I. Background

10) The Constitution of the Maldives provides for the rights and freedoms of expression, association and assembly that would theoretically allow for ease of operation for civil society. Civil society is however prohibited from engaging in political activity and conducting activities that are contradictory to Islam. Freedom of expression too is limited to that which does not contradict the tenets of Islam.

11) Civil Society in the Maldives is governed through the Associations Act which predates the current Constitution of the Maldives and as such has articles that are not in line with the spirit of the Constitution. A politically appointed Registrar of Associations, whose limits of powers and whose responsibilities are not clearly defined in the Act, has the authority to register and dissolve Civil Society Organizations.

II. Achievements and Good Practices

• New draft legislation on Associations

12) A civil society organization, with the endorsement of the Attorney General of the Maldives has been able to come up with a new draft legislation on Associations.

• Access to Information Act enacted by the Maldives

13) The passage of Access to Information Act was an important step by the country in promoting transparency and allowing citizen's access to information which can help improve accountability of key officials. An independent information commissioner has been appointed to oversee the implementation of the Act.

III. Challenges

• Intimidations and threats against Civil Society, Human Rights Actors and Journalists

14) Civil Society Organizations have faced various forms of threats that impede their operation. One of the major organizations working in the Maldives, Transparency Maldives has faced threats of dissolutions by the Registrar of Associations, while individuals have made death threats against their staff. Similarly Maldivian Democracy Network which works on Human Rights and Justice Reform has had their offices ransacked and confidential documents stolen. According to both organizations these threats and actions impacts their right to freedom of expression and promotes self-censorship. No case with regards to threats against Civil Society has yet been prosecuted. Similar threats have been received by other organizations that operate in the country.

15) Journalists that report on gang violence and related issues as well issues that are seen to be sensitive with regards to religion have been faced with death threats. While 15 journalists received death threats, one journalist, Ahmed Rilwan has been missing since August 2014.

• Limitation to freedom of Assembly

16) The Freedom of Peaceful Assembly Act of 2013 places limitation on the rights guaranteed under the Constitution with regards to freedom of expression, freedom of peaceful assembly and freedom of media by placing restriction on places of assembly, adding administrative hurdles to assembly and placing limitations on media covering the protests.

IV. Recommendations

- Expedite the passing of the new Associations Act that can create an enabling environment for Civil Society.**

- Take necessary steps to allow for a safe and conducive environment for Civil Society to operate in.
- Make amendments to the Freedom of Peaceful Assembly Act to bring it in line with international obligations.

Women's Human Rights and Gender Equality

V. Background

17) While the 2008 Constitution of the Maldives guaranteed equal rights for all irrespective of their sex and allowed the opportunity for women to stand for the highest office, there still exist many hindrances for women to enjoy the rights enshrined in the Constitution and partake in political, social, economic and cultural activities.

18) Data shows that 1 in 3 women aged 15-49 have experienced some form of physical or sexual violence during their lifetime. This includes intimate partner violence, violence by other people such as family members, work colleagues and strangers, as well as childhood sexual abuse³.

19) The president's 15 member Cabinet has only 2 women, while only 5 women are in the 85 member Parliament. The local councils too have a low representation of women. The women's development committees, were created through legislation to tackle the low level of women represented in the local councils, however these committees were not given the resources or an authoritative mandate to play a meaningful role in their community's local decision making process.

VI. Achievements and Good Practices

- **Measures undertaken to tackle violence against women and steps taken to improve gender equality**

20) The Government of Maldives has enacted laws on Domestic Violence in May 2012 and law on Sexual Harassment and Sexual Offences in May 2014. The Sexual Offences Act for the first time criminalized marital rape, which is a huge step forward for the country. Additionally, the government has also begun the drafting of a Bill on Gender Equality and have held initial consultations with stakeholders on the draft legislation.

VII. Challenges

- **Lack of resources, human resource capacity and political will to tackle gender inequality and gender based violence**

21) While the Parliament of the Maldives has passed progressive legislations, the same Parliament has not been able to allocate enough resources for the successful implementation of these legislations. For example, the law on Domestic Violence was ratified in 2012; however the shelters that are required under the law are yet to be established. The government has however improvised and added an extra block to four of the already existing Family and Child Service Centers (FCSCs) to provide a safe home for victims of abuse, but they are unable to cater to the demand.

22) Subsequent governments since 2008, has been unable maintain a consistent structure or a mandate for overseeing gender issues. From 2008 till the unexpected change of government in 2012, the mandate for gender issues fell under the Ministry of Health. In 2012 a separate ministry called the Ministry of Gender, Family and Human Rights was created and given the mandate on gender, once more in 2013, the gender mandate was changed to the new Ministry of Health and Gender which then again was

³ Maldives Study on Women's Health and Life Experiences (2012),
<http://minivannews.com/files/2010/10/Maldives-Study-on-Womens-Health-and-Life-Experiences-2007.pdf>

changed in 2014 to a new Ministry of Law and Gender. The gender section of the current Ministry of Law and Gender has only 6 programme staff including two political appointees.

- **Rising conservatism affecting women's human rights**

23) Maldives had been a moderate Islamic country for a long time, however recent trends shows that there is rapid movement towards conservative interpretation of Islam which is having a negative impact on women's realization of their rights. A recent study done by the Human Rights Commission of the Maldives⁴ shows the number of women who believed it is justifiable for their husbands to hit them has increased since 2005, while the majority of people, men and women in the study believed that a husband can only hit their wife if she goes against Islam.

24) Increasingly a number of religious sermons that are approved by the Ministry of Islamic Affairs promotes the stereotypical roles assigned for women, and has continuously promoted the message that women's place was at home. Similarly there has been many remarks made by senior political figures and religious leaders that were demeaning of women, promoted gender discrimination and sometimes gender based violence, such as the endorsement made by the Vice President of the Maldivian Fiqh Academy endorsing female circumcision.

- **Inequality and discrimination through the Family Law**

25) The family law of the Maldives which relates to everyday life of the Maldivian people is far removed from the everyday lived realities of the Maldivian people and perpetuates the stereotypical role of men and women and sustains the notion of men's superiority over women. The law is inconsistent with some of the articles of CEDAW particularly to the article 16 of the convention which the Maldives has a reservation to. The law undermines the right for free choice for women as they require consent of their guardian or the closest male kin from the paternal side in order to enter into a marriage. Furthermore, the law allows for polygamy which is also discriminatory towards women and impacts on women's security and dignity. Anecdotal evidence shows an increasing number of polygamous marriages.

- **Decreasing of women's participation in political life**

26) In Maldives social and cultural barriers impact women's ability to attain public office. The percentage of women elected to the parliament declined from 6% in 2009 to 5% in 2014. A similar decline was seen in the local council's elections as well.

VIII. Recommendations

- Conduct a comprehensive review of the existing family law and make amendments to the legislation in line with CEDAW and other international obligations
- Improve resource allocations to government agencies mandated with the gender responsibility and for the implementation of laws that tackle violence against women
- Take necessary steps to promote religious dialogue on issues that affect women's human rights
- Take necessary measure to prevent the promotion of discrimination women through speech, sermons and others
- Take effective measures to increase women's participation in political and public life.

⁴ The Rights Side of Life, Human Rights Commission of the Maldives 2012, <http://www.hrcm.org.mv/publications/otherreports/TheRightSideOfLife10122012Eng.pdf>